

# Title 38: WATERS AND NAVIGATION

## Chapter 13: WASTE MANAGEMENT

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**Maine Revised Statutes**  
**Title 38: WATERS AND NAVIGATION**  
**Chapter 13: WASTE MANAGEMENT**

**Subchapter 1: GENERAL PROVISIONS**

**§1301. SHORT TITLE**

This chapter shall be known and may be cited as the "Maine Hazardous Waste, Septage and Solid Waste Management Act." [1979, c. 383, §1 (AMD).]

**SECTION HISTORY**

1973, c. 387, (NEW). 1979, c. 383, §1 (AMD).

**§1302. DECLARATION OF POLICY**

For the purposes of this chapter and chapter 24, the Legislature finds and declares it to be the policy of the State, consistent with its duty to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent air, water and land pollution, to establish a coordinated statewide waste reduction, recycling and management program. [1989, c. 585, Pt. E, §2 (RPR).]

The Legislature finds and declares that it is the policy of the State to pursue and implement an integrated approach to hazardous and solid waste management, which shall be based on the following priorities: reduction of waste generated at the source, including both the amount and toxicity of waste; waste reuse; waste recycling; waste composting; waste processing which reduces the volume of waste needing disposal, including waste-to-energy technology; and land disposal. [1989, c. 585, Pt. E, §2 (RPR).]

The Legislature finds that it is in the best interests of the State to prefer waste management options with lower health and environmental risk and to ensure that such options are neither foreclosed nor limited by the State's commitment to disposal methods. The Legislature declares that it is in the public interest to aggressively promote waste reduction, reuse and recycling as the preferred methods of waste management. [1989, c. 585, Pt. E, §2 (RPR).]

The Legislature finds that environmentally suitable sites for waste disposal are in limited supply and represent a critical natural resource. At the same time, new technologies and industrial developments are making recycling and reuse of waste an increasingly viable and economically attractive option which carries minimal risk to the State and the environment and an option which allows the conservation of the State's limited disposal capacity. [1989, c. 585, Pt. E, §2 (RPR).]

The Legislature further finds that needed municipal waste recycling and disposal facilities have not been developed in a timely and environmentally sound manner because of diffused responsibility for municipal waste planning, processing and disposal among numerous and overlapping units of local government. The Legislature also finds that direct state action is needed to assist municipalities in separating, collecting, recycling and disposing of solid waste, and that sound environmental policy and economics of scale dictate a preference for public solid waste management planning and implementation on a regional and state level. [1989, c. 585, Pt. E, §2 (RPR).]

The Legislature finally declares that the provisions of this chapter shall be construed liberally to address the findings and accomplish the policies in this section. [1989, c. 585, Pt. E, §2 (RPR).]

**SECTION HISTORY**

1973, c. 387, (NEW). 1979, c. 383, §1 (AMD). 1983, c. 342, §1 (AMD). 1987, c. 517, §5 (RPR). 1989, c. 585, §E2 (RPR).

**§1303. DEFINITIONS****(REPEALED)**

## SECTION HISTORY

1973, c. 387, (NEW). 1977, c. 78, §208 (AMD). 1979, c. 383, §2 (RPR).  
 1979, c. 663, §§234,235 (AMD). 1979, c. 699, §§3-8 (AMD). 1981, c. 430,  
 §§1-5 (AMD). 1981, c. 470, §A170 (AMD). 1981, c. 478, §§1,2 (AMD).  
 1981, c. 528, §1 (AMD). 1983, c. 342, §§2,3 (AMD). 1983, c. 432, §§1-3  
 (AMD). 1983, c. 743, §15 (AMD). 1985, c. 822, §§2,3 (AMD). 1987, c.  
 517, §6 (AMD). 1987, c. 769, §A181 (AMD). 1987, c. 787, §16 (AMD).  
 1989, c. 124, §1 (AMD). 1989, c. 585, §E3 (RP).

**§1303-A. HAZARDOUS WASTE; ADDITIONAL RULE-MAKING AUTHORITY****(REPEALED)**

## SECTION HISTORY

1979, c. 699, §9 (NEW). 1981, c. 430, §6 (RPR). 1983, c. 395, §1 (AMD).  
 1983, c. 432, §4 (AMD). 1983, c. 467, §1 (AMD). 1983, c. 666, (AMD).  
 1983, c. 816, §B21 (AMD). 1985, c. 506, §A81 (AMD). 1987, c. 517, §7  
 (RP).

**§1303-B. WASTE OIL DEALERS; RULE-MAKING AUTHORITY****(REPEALED)**

## SECTION HISTORY

1983, c. 342, §4 (NEW). 1987, c. 517, §8 (RP).

**§1303-C. DEFINITIONS**

As used in this chapter or in chapter 24, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 878, Pt. H, §7 (AMD).]

**1. Agency.**

[ 1995, c. 656, Pt. A, §19 (RP) .]

**1-A. Biomedical waste.** "Biomedical waste" means waste that may contain human pathogens of sufficient virulence and in sufficient concentrations that exposure to it by a susceptible human host could result in disease or that may contain cytotoxic chemicals used in medical treatment.

[ 1989, c. 869, Pt. A, §3 (NEW); 1989, c. 869, Pt. A, §21 (AFF) .]

**1-B. Bypass.**

[ 2005, c. 612, §1 (NEW); T. 38, §1303-C, sub-§1-B (RP) .]

**1-C. Bypass.** "Bypass" means any solid waste that is destined for disposal, processing or beneficial use at a solid waste facility but that cannot be disposed of, processed or beneficially used at that facility because of the facility's malfunction, insufficient capacity, inability to process or burn, downtime or any other comparable reason.

[ 2007, c. 338, §1 (NEW); 2007, c. 338, §5 (AFF); 2007, c. 414, §1  
 (NEW) .]

**2. Board.**

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §225 (RP) .]

**2-A. Class I liquid.** "Class I liquid" means any liquid having a flash point below 100° Fahrenheit.

[ 1995, c. 573, §1 (NEW) .]

**2-B. Class II liquid.** "Class II liquid" means any liquid having a flash point at or above 100° Fahrenheit and below 140° Fahrenheit.

[ 1995, c. 573, §1 (NEW) .]

**3. Closing reserve fund.** "Closing reserve fund" means a fund created for the purpose of financing the closing and maintenance after closing of a waste facility.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**4. Commercial hazardous waste facility.** "Commercial hazardous waste facility" means:

A. A waste facility that handles hazardous wastes generated off the site of the facility; or [1989, c. 585, Pt. E, §4 (NEW) .]

B. A facility that, in the handling of a waste generated off the site, generates hazardous waste. [1989, c. 585, Pt. E, §4 (NEW) .]

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**5. Commercial landfill facility.** "Commercial landfill facility" means a commercial solid waste facility that is used for the burial of solid waste.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**6. Commercial solid waste disposal facility.** "Commercial solid waste disposal facility" means a solid waste disposal facility except as follows:

A. [2007, c. 338, §5 (AFF); 2007, c. 338, §2 (RP) .]

A-1. [2005, c. 612, §2 (NEW); T. 38, §1303-C, sub-§6, ¶A-1 (RP) .]

A-2. A solid waste facility that is owned by a public waste disposal corporation under section 1304-B, subsection 5:

(1) As long as the public waste disposal corporation controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility; and

(2) If the facility is a solid waste landfill, the facility accepts only waste that is generated within the State unless the commissioner finds that the acceptance of waste that is not generated within the State provides a substantial public benefit pursuant to section 1310-AA, subsection 1-A; [2007, c. 338, §2 (NEW); 2007, c. 338, §5 (AFF) .]

B. [2007, c. 338, §5 (AFF); 2007, c. 338, §2 (RP) .]

B-1. [2005, c. 612, §2 (NEW); T. 38, §1303-C, sub-§6, ¶B-1 (RP) .]

B-2. A solid waste facility that is owned by a municipality under section 1305:

(1) As long as the municipality controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility; and

(2) If the facility is a solid waste landfill, the facility accepts only waste that is generated within the State unless:

(a) The commissioner finds that the acceptance of waste that is not generated within the State provides a substantial public benefit pursuant to section 1310-AA, subsection 1-A; and

(b) Acceptance of waste that is not generated within the State is approved by a majority of the voters of the municipality by referendum election; [2007, c. 338, §2 (NEW); 2007, c. 338, §5 (AFF).]

C. [2007, c. 338, §5 (AFF); 2007, c. 338, §2 (RP).]

C-1. [2005, c. 612, §2 (NEW); T. 38, §1303-C, sub-§6, ¶C-1 (RP).]

C-2. A solid waste facility that is owned by a refuse disposal district under chapter 17:

(1) As long as the refuse disposal district controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility; and

(2) If the facility is a solid waste landfill, the facility accepts only waste that is generated within the State unless the commissioner finds that the acceptance of waste that is not generated within the State provides a substantial public benefit pursuant to section 1310-AA, subsection 1-A; [2007, c. 338, §2 (NEW); 2007, c. 338, §5 (AFF).]

D. Beginning January 1, 2007, a solid waste facility owned and controlled by the Department of Administrative and Financial Services, Bureau of General Services under chapter 24; [2011, c. 655, Pt. GG, §7 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

D-1. [2005, c. 612, §2 (NEW); T. 38, §1303-C, sub-§6, ¶D-1 (RP).]

E. A solid waste facility owned and controlled by a single entity that:

(1) Generates at least 85% of the solid waste disposed of at a facility, except that the facility may accept from other sources, on a nonprofit basis, an amount of solid waste that is no more than 15% of all solid waste accepted on an annual basis; or

(2) Is an owner of a manufacturing facility that has, since January 1, 2006, generated at least 85% of the solid waste disposed of at the solid waste facility, except that one or more integrated industrial processes of the manufacturing facility are no longer in common ownership, and those integrated industrial processes will continue to generate waste that will continue to be disposed of at the solid waste facility. This exemption only applies if the source and type of waste disposed of at the solid waste facility remains the same as that previously disposed of by the single entity.

For the purposes of this paragraph, "single entity" means an individual, partnership, corporation or limited liability corporation that is not engaged primarily in the business of treating or disposing of solid waste or special waste. This paragraph does not apply if an individual partner, shareholder, member or other ownership interest in the single entity disposes of waste in the solid waste facility. A waste facility receiving ash resulting from the combustion of municipal solid waste or refuse-derived fuel is not exempt from this subsection solely by operation of this paragraph.

For purposes of this paragraph, "integrated industrial processes" means manufacturing processes, equipment or components, including, but not limited to, energy generating facilities, that when used in combination produce one or more manufactured products for sale; or [2011, c. 206, §20 (RPR).]

F. A private corporation that accepts material-separated, refuse-derived fuel as a supplemental fuel and does not burn waste other than its own. [1999, c. 525, §1 (NEW).]

For purposes of this subsection, "waste that is generated within the State" includes residue and bypass generated by incineration, processing and recycling facilities within the State or waste whether generated within the State or outside of the State if it is used for daily cover, frost protection or stability or is generated within 30 miles of the solid waste disposal facility.

[2011, c. 655, Pt. GG, §7 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]



**7. Commercial waste facility.**

[ 1999, c. 525, §2 (RP) .]

**8. Construction and demolition debris.** "Construction and demolition debris" means debris resulting from construction, remodeling, repair, and demolition of structures. It excludes asbestos and other special wastes.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**9. Contingency reserve fund.** "Contingency reserve fund" means a fund maintained for the purpose of meeting unexpected contingencies in the operation of a waste facility.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**10. Conveyance.** "Conveyance" means any aircraft, watercraft, vehicle or other machine used for transportation on land, water or in the air.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**11. Department.**

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §225 (RP) .]

**12. Disposal.** "Disposal" means the discharge, deposit, dumping, spilling, leaking or placing of hazardous, biomedical or solid waste, waste oil, refuse-derived fuel, sludge or septage into or on land, air or water and the incineration of solid waste, refuse-derived fuel, sludge or septage so that the hazardous, biomedical or solid waste, waste oil, refuse-derived fuel, sludge or septage or a constituent of the hazardous, biomedical or solid waste, waste oil, refuse-derived fuel, sludge or septage may enter the environment or be emitted into the air, or discharged into waters, including ground waters.

[ 1993, c. 732, Pt. A, §7 (AMD) .]

**13. Generation.** "Generation" means the act or process of producing hazardous, biomedical or solid waste, waste oil, sludge or septage.

[ 1991, c. 72, §1 (AMD) .]

**13-A. Generator.**

[ 1991, c. 520, §4 (RP) .]

**14. Handle.** "Handle" means to store, transfer, collect, separate, salvage, process, recycle, reduce, recover, incinerate, dispose of or treat.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**15. Hazardous waste.** "Hazardous waste" means a waste substance or material, in any physical state, designated as hazardous by the board under section 1319-O. It does not include waste resulting from normal household or agricultural activities. The fact that a hazardous waste or part or constituent may have value or other use or may be sold or exchanged does not exclude it from this definition.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**15-A. Hazardous waste incinerator.** "Hazardous waste incinerator" means an enclosed device using controlled flame combustion to thermally break down hazardous waste.

[ 1989, c. 794, §2 (NEW) .]

**15-B. Host community.** "Host community" means any town, township or city that is the geographic site of a solid waste disposal facility or any immediately contiguous town, township or city if such town, township or city can demonstrate to the department that it incurs a direct financial impact related to any necessary development or maintenance of infrastructure or to any necessary provision of services as a result of the location or operation of that solid waste disposal facility.

[ 2007, c. 406, §1 (NEW) .]

**16. Incineration facility.** "Incineration facility" means a facility where municipal solid waste or refuse-derived fuel is disposed of through combustion, including combustion for the generation of heat, steam or electricity.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**17. Inert fill.** "Inert fill" means clean soil material, rocks, bricks, and cured concrete, which are not mixed with other waste, and which are not derived from an ore mining activity.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**18. Land clearing debris.** "Land clearing debris" means solid wastes resulting from the clearing of land and consisting solely of brush, stumps, soil material and rocks.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**19. Manifest.** "Manifest" means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transport.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**19-A. Material-separated, refuse-derived fuel.** "Material-separated, refuse-derived fuel" means a binder-enhanced, pelletized, solid fuel product made from the combustible fraction of a municipal solid waste stream that has been processed to remove the recyclable material before combustion. The product may not contain more than 6% by weight of plastic, metal, glass or food waste. In addition, the production of material-separated, refuse-derived fuel may not exceed 40% by weight of the total municipal solid waste stream from which it was derived.

[ 1991, c. 220, §9 (NEW) .]

**19-B. Primary sand and gravel recharge area.** "Primary sand and gravel recharge area" has the same meaning as in section 562-A, subsection 16-B.

[ 1993, c. 383, §33 (NEW) .]

**19-C. Office.**

[ 2011, c. 655, Pt. GG, §70 (AFF); 2011, c. 655, Pt. GG, §8 (RP) .]

**20. Recyclable.** "Recyclable" means possessing physical and economic characteristics that allow a material to be recycled.

[ 1989, c. 585, Pt. E, §4 (NEW) . ]

**21. Recycle.** "Recycle" means to recover, separate, collect and reprocess waste materials for sale or reuse other than use as a fuel for the generation of heat, steam or electricity.

[ 1993, c. 1, §131 (COR) . ]

**22. Recycling.** "Recycling" means the collection, separation, recovery and sale or reuse of materials that would otherwise be disposed of or processed as waste or the mechanized separation and treatment of waste, other than through combustion, and the creation and recovery of reusable materials other than as a fuel for the generation of electricity.

[ 1989, c. 585, Pt. E, §4 (NEW) . ]

**23. Refuse-derived fuel.** "Refuse-derived fuel" means municipal solid waste which has been processed prior to combustion to increase the heat input value of the waste.

[ 1989, c. 585, Pt. E, §4 (NEW) . ]

**24. Regional association.** "Regional association" means 2 or more municipalities that have formed a relationship to manage the solid waste generated within the participating municipalities and for which those municipalities are responsible. The relationship must be formed by one or more of the following methods:

A. Creation of a refuse disposal district under chapter 17; [1989, c. 869, Pt. A, §5 (NEW) . ]

B. Creation of a nonprofit corporation that consists exclusively of municipalities and is organized under Title 13, chapter 81 or Title 13-B, for the purpose, among other permissible purposes, of owning, constructing or operating a solid waste disposal facility, including a public waste disposal corporation under section 1304-B, or whose members contract for the disposal of solid waste with a solid waste disposal facility, including, but not limited to, a qualifying facility as defined in Title 35-A, section 3303; [1997, c. 602, §1 (AMD); 1997, c. 602, §3 (AFF) . ]

C. Creation of a joint exercise of powers agreement under Title 30-A, chapter 115; or [1989, c. 869, Pt. A, §5 (NEW) . ]

D. Contractual commitment. [1989, c. 869, Pt. A, §5 (NEW) . ]

For the purposes of this chapter, a regional association and the entities described in paragraphs B and C may include counties and quasi-municipal corporations as members provided the counties or quasi-municipal corporations, when acting by themselves within their own jurisdictions, are capable of exercising all of the powers of the regional association.

[ 1997, c. 602, §1 (AMD); 1997, c. 602, §3 (AFF) . ]

**25. Residue.** "Residue" means waste remaining after the handling, processing, incineration or recycling of solid waste including, without limitation, front end waste and ash from incineration facilities.

[ 1989, c. 869, Pt. A, §5 (AMD) . ]

**25-A. Responsible party.** For the purposes of subchapter II-A only, "responsible party" means any or all of the following persons:

A. The owner or operator of an uncontrolled tire stockpile; and [1991, c. 517, Pt. A, §1 (NEW) . ]

B. Any person who owned or operated an uncontrolled tire stockpile from the time any tire arrived at that stockpile. [1991, c. 517, Pt. A, §1 (NEW).]

[ 1991, c. 517, Pt. A, §1 (NEW) .]

**26. Resource recovery.** For the purposes of section 1304-B only, "resource recovery" means the recovery of materials or substances that still have useful physical or chemical properties after serving a specific purpose and can be reused or recycled for the same or other purposes.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**27. Septage.** "Septage" means waste, refuse, effluent, sludge and any other materials from septic tanks, cesspools or any other similar facilities.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**27-A. Significant ground water aquifer.** "Significant ground water aquifer" has the same meaning as in section 562-A, subsection 19-A.

[ 1993, c. 383, §34 (NEW) .]

**28. Site.** "Site" means the same or geographically contiguous property which may be divided by a public or private right-of-way, provided that the entrance and exit between the properties is at a crossroads intersection and access is by crossing as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered site property.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**28-A. Sludge.** "Sludge" means nonhazardous solid, semisolid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant or wet process air pollution control facility or any other waste having similar characteristics and effect. The term does not include industrial discharges that are point sources subject to permits under the federal Clean Water Act, 33 United States Code, Section 1342 (1999).

[ 1999, c. 393, §1 (NEW) .]

**29. Solid waste.** "Solid waste" means useless, unwanted or discarded solid material with insufficient liquid content to be free-flowing, including, but not limited to, rubbish, garbage, refuse-derived fuel, scrap materials, junk, refuse, inert fill material and landscape refuse, but does not include hazardous waste, biomedical waste, septage or agricultural wastes. The fact that a solid waste or constituent of the waste may have value or other use or may be sold or exchanged does not exclude it from this definition.

[ 2001, c. 247, §1 (AMD) .]

**30. Solid waste disposal facility.** "Solid waste disposal facility" means a solid waste facility for the incineration or landfilling of solid waste or refuse-derived fuel. Facilities that burn material-separated, refuse-derived fuel, either alone or in combination with fuels other than municipal solid waste or refuse-derived fuels, are not solid waste disposal facilities.

A. [1989, c. 869, Pt. A, §5 (RP).]

B. [1989, c. 869, Pt. A, §5 (RP).]

[ 1991, c. 220, §10 (AMD) .]

**31. Solid waste facility.** "Solid waste facility" means a waste facility used for the handling of solid waste, except that the following facilities are not included:

- A. A waste facility that employs controlled combustion to dispose of waste generated exclusively by an institutional, commercial or industrial establishment that owns the facility; [1991, c. 492, §1 (AMD) .]
- B. Lime kilns; wood chip, bark and hogged fuel boilers; kraft recovery boilers and sulfite process recovery boilers, which combust solid waste generated exclusively at the facility; and [1991, c. 492, §1 (AMD) .]
- C. An industrial boiler that combusts mixed paper, corrugated cardboard or office paper to generate heat, steam or electricity if:
  - (1) The mixed paper, corrugated cardboard or office paper would otherwise be placed in a landfill;
  - (2) The market value of the mixed paper, corrugated cardboard or office paper as a raw material for the manufacture of a product with recycled content is less than its value to the facility owner as a fuel supplement;
  - (3) The mixed paper, corrugated cardboard or office paper is combusted as a substitute for, or supplement to, fossil or biomass fuels that constitute the primary fuels combusted in the industrial boiler; and
  - (4) The boiler combusts no other forms of solid waste except as provided in this subsection. [1993, c. 378, §4 (AMD) .]

[ 1993, c. 378, §4 (AMD) .]

**32. Solid waste landfill.** "Solid waste landfill" means a waste disposal facility for the disposal of solid waste on or in land. This term does not include landspreading sites used in programs approved by the department.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**32-A. Solid waste processing facility.** "Solid waste processing facility" means a land area, structure, equipment, machine, device, system or combination thereof, other than an incineration facility, that is operated to reduce the volume or change the chemical or physical characteristics of solid waste. "Solid waste processing facility" includes but is not limited to a facility that employs shredding, baling, mechanical and magnetic separation or composting or other stabilization technique to reduce or otherwise change the nature of solid waste.

[ 2007, c. 583, §1 (NEW) .]

**33. Source separation.** "Source separation" means the preparation of materials for recycling by separation from wastes at the point of generation.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**34. Special waste.** "Special waste" means any solid waste generated by sources other than domestic and typical commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, that may disrupt or impair effective waste management or threaten the public health, human safety or the environment and requires special handling, transportation and disposal procedures. Special waste includes, but is not limited to:

- A. Oil, coal, wood and multifuel boiler and incinerator ash; [1989, c. 585, Pt. E, §4 (NEW) .]
- B. Industrial and industrial process waste; [1989, c. 585, Pt. E, §4 (NEW) .]

C. Waste water treatment plant sludge, paper mill sludge and other sludge waste; [1989, c. 585, Pt. E, §4 (NEW).]

D. Debris and residuals from nonhazardous chemical spills and cleanup of those spills; [1989, c. 585, Pt. E, §4 (NEW).]

E. Contaminated soils and dredge spoils; [1989, c. 585, Pt. E, §4 (NEW).]

F. Asbestos and asbestos-containing waste; [1989, c. 585, Pt. E, §4 (NEW).]

G. Sand blast grit and nonliquid paint waste; [1989, c. 585, Pt. E, §4 (NEW).]

H. [1989, c. 869, Pt. A, §21 (AFF); 1989, c. 869, Pt. A, §5 (RP).]

I. High and low pH waste; [1989, c. 585, Pt. E, §4 (NEW).]

J. Spent filter media and residue; and [1989, c. 585, Pt. E, §4 (NEW).]

K. Other waste designated by the board, by rule. [1989, c. 585, Pt. E, §4 (NEW).]

[ 1989, c. 869, Pt. A, §5 (AMD); 1989, c. 869, Pt. A, §21 (AFF) .]

**35. State waste management and recycling plan.** "State waste management and recycling plan" means the plan adopted by the former Maine Waste Management Agency pursuant to chapter 24, subchapter 2, subsequent plans developed by the former State Planning Office pursuant to Title 5, former section 3305, subsection 1, paragraph N and the department pursuant to section 2122 and may also be referred to as "state plan."

[ 2011, c. 655, Pt. GG, §9 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**36. Storage.** "Storage" means the containment of hazardous wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of the hazardous wastes.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**37. Substantially expand.** "Substantially expand" means the expansion of an existing licensed hazardous waste facility by more than 25%, as measured by volume of waste or affected land area, from the date of its initial licensed operation.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**38. Transport.** "Transport" means the movement of hazardous or solid waste, waste oil, sludge or septage from the point of generation to any intermediate points and finally to the point of ultimate disposition. Movement of hazardous waste on the site where it is generated or on the site of a licensed waste facility for hazardous waste is not "transport." Movement of waste oil on the site where it is generated or on the site of a licensed waste oil dealer's facility is not "transport."

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**39. Treatment.** "Treatment" means any process, including but not limited to incineration, designed to change the character or composition of any hazardous waste, waste oil or biomedical waste so as to render the waste less hazardous or infectious.

[ 1995, c. 462, Pt. A, §90 (AFF); 1995, c. 462, Pt. A, §76 (RPR) .]

**39-A. Uncontrolled tire stockpile.** "Uncontrolled tire stockpile" means an area or location, whether or not licensed, where used motor vehicle tires are or were handled, stored or disposed of in such a manner as to present a significant fire hazard or a threat to public health or to the quality of a classified body of surface water or a significant sand and gravel aquifer or fractured bedrock aquifer as defined in section 1310-N, subsection 2-A.

[ 1991, c. 517, Pt. A, §1 (NEW) .]

**39-B. Used oil.** "Used oil" means waste oil, as defined in subsection 42.

[ 1995, c. 573, §2 (NEW) .]

**39-C. Used oil collection center.** "Used oil collection center" means a site or facility where used oil is accepted from the public and collected or stored in an aboveground tank for recycling.

[ 1995, c. 573, §2 (NEW) .]

**40. Waste facility.** "Waste facility" means any land area, structure, location, equipment or combination of them, including dumps, used for handling hazardous, biomedical or solid waste, waste oil, sludge or septage. A land area or structure does not become a waste facility solely because:

A. It is used by its owner for disposing of septage from the owner's residence; [1989, c. 585, Pt. E, §4 (NEW).]

B. It is used to store for 90 days or less hazardous wastes generated on the same premises; [1989, c. 585, Pt. E, §4 (NEW).]

C. It is used by individual homeowners or lessees to open burn leaves, brush, deadwood and tree cuttings accrued from normal maintenance of their residential property, when such burning is permitted under section 599, subsection 3; or [1989, c. 585, Pt. E, §4 (NEW).]

D. It is used by its residential owner to burn highly combustible domestic, household trash such as paper, cardboard cartons or wood boxes, when such burning is permitted under section 599, subsection 3. [1989, c. 585, Pt. E, §4 (NEW).]

[ 1989, c. 869, Pt. A, §5 (AMD); 1989, c. 869, Pt. A, §21 (AFF) .]

**41. Waste management.** "Waste management" means purposeful, systematic and unified control of the handling and transportation of hazardous, biomedical or solid waste, waste oil, sludge or septage.

[ 1991, c. 72, §1 (AMD) .]

**42. Waste oil.** "Waste oil" means a petroleum-based or synthetic oil that, through use or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties. Waste oil that exhibits hazardous wastes characteristics, or has been contaminated with hazardous wastes in excess of quantities normally occurring in waste oil, is subject to the provisions of this chapter dealing with hazardous wastes.

[ 1999, c. 334, §10 (AMD) .]

**43. Waste oil dealer.** "Waste oil dealer" means any person in the business of transporting or handling more than 1,000 gallons of waste oil for the purpose of resale in a calendar month. A person who collects or stores waste oil on the site of generation, whether or not for the purpose of resale, is not a waste oil dealer.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**44. Waste reduction.** "Waste reduction" means an action that reduces waste at the point of generation and may also be referred to as "source reduction."

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**45. Waste resulting from agricultural activities.** "Waste resulting from agricultural activities" means wastes which result from agricultural activities defined in section 361-A, subsection 1-B, which are returned to the soils as fertilizers and includes waste pesticides when generated by a farmer in his own use, provided that he triple rinses each emptied pesticide container in accordance with departmental rules and disposes of the pesticide residues in a manner consistent with the disposal instructions on the pesticide label.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**46. Wood wastes.** "Wood wastes" means brush, stumps, lumber, bark, woodchips, shavings, slabs, edgings, slash and sawdust, which are not mixed with other waste.

[ 1989, c. 585, Pt. E, §4 (NEW) .]

**47. Yard wastes.** "Yard wastes" means grass clippings, leaves and other vegetal matter other than wood wastes and land clearing debris.

[ 1991, c. 72, §2 (NEW) .]

#### SECTION HISTORY

1989, c. 585, §E4 (NEW). 1989, c. 794, §2 (AMD). 1989, c. 869, §§A3-5,21 (AMD). 1989, c. 878, §H7 (AMD). 1989, c. 890, §§A40,B225 (AMD). 1989, c. 929, §5 (AMD). 1991, c. 72, §§1,2 (AMD). 1991, c. 220, §§6-10 (AMD). 1991, c. 321, (AMD). 1991, c. 492, §§1,2 (AMD). 1991, c. 517, §A1 (AMD). 1991, c. 520, §4 (AMD). RR 1993, c. 1, §131 (COR). 1993, c. 355, §§46,47 (AMD). 1993, c. 378, §4 (AMD). 1993, c. 383, §§33,34 (AMD). 1993, c. 424, §§1,2 (AMD). 1993, c. 424, §3 (AFF). 1993, c. 732, §§A7,8 (AMD). 1995, c. 462, §A76 (AMD). 1995, c. 462, §A90 (AFF). 1995, c. 465, §A12 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 573, §§1,2 (AMD). 1995, c. 625, §C5 (AFF). 1995, c. 656, §§A19-21 (AMD). 1997, c. 393, §B9 (AMD). 1997, c. 602, §1 (AMD). 1997, c. 602, §3 (AFF). 1999, c. 334, §10 (AMD). 1999, c. 393, §1 (AMD). 1999, c. 525, §§1,2 (AMD). 2001, c. 247, §1 (AMD). 2005, c. 612, §§1,2 (AMD). 2007, c. 338, §§1, 2 (AMD). 2007, c. 338, §5 (AFF). 2007, c. 406, §1 (AMD). 2007, c. 414, §1 (AMD). 2007, c. 583, §1 (AMD). 2011, c. 206, §20 (AMD). 2011, c. 655, Pt. GG, §§7-9 (AMD). 2011, c. 655, Pt. GG, §70 (AFF). MRSA T. 38, §1303-C/6 (AMD). MRSA T.38, §1303-C/1B (AMD).

## §1304. DEPARTMENT; POWERS AND DUTIES

**1. Rules.** Subject to the Maine Administrative Procedure Act, Title 5, chapter 375, the board may adopt, amend and enforce rules as it deems necessary to govern waste management, including the location, establishment, construction and alteration of waste facilities as the facility affects the public health and welfare or the natural resources of the State. The rules shall be designed to minimize pollution of the State's air, land and surface and ground water resources, prevent the spread of disease or other health hazards, prevent contamination of drinking water supplies and protect public health and safety. In adopting these rules, the board shall also consider economic impact, technical feasibility and such differences as are created by population, hazardous or solid waste, sludge or septage volume and geographic location.

[ 1989, c. 585, Pt. E, §5 (AMD) .]



**1-A. Rules; transportation.** The board shall adopt rules relating to the transportation of solid waste, including, without limitation:

A. Licensing categories of transporters of septage, used motor vehicle tires and construction or demolition debris, conveyances used for the transportation of septage, used motor vehicle tires and construction or demolition debris and the operators of these conveyances as the board finds necessary to effect sound waste management; [1999, c. 385, §3 (AMD).]

B. Establishment of transporter licensing and conveyance registration fees that are sufficient to recover all costs of administering, monitoring compliance with and enforcing the provisions of this subsection and which fees must be paid to the Maine Environmental Protection Fund; [1991, c. 824, Pt. A, §87 (AMD).]

C. A manifest system for categories of solid waste that must provide a means to account for septage, used motor vehicle tires and construction or demolition debris handled, transported and disposed of in the State; and [1999, c. 385, §3 (AMD).]

D. Evidence of financial capacity of transporters to protect public health, safety and welfare and the environment, including, without limitation:

(1) Liability insurance;

(2) Performance bonding; and

(3) Financial ability to comply with statutory and regulatory requirements or conditions. [1987, c. 517, §9 (NEW).]

[ 1999, c. 385, §3 (AMD) .]

**1-B. Handling of special waste.** The board may adopt rules relating to the handling of special waste, including, without limitation:

A. Containerization and labeling of special waste; [1987, c. 517, §9 (NEW).]

B. Reporting on handling of special waste; [1987, c. 517, §9 (NEW).]

C. Waste which is not compatible; and [1987, c. 517, §9 (NEW).]

D. A marking system, by categories of waste, to clearly identify vehicles transporting solid waste. [1987, c. 517, §9 (NEW).]

[ 1987, c. 517, §9 (NEW) .]

**1-C. Rules; agronomic utilization of sludge.** Rules adopted by the board relating to the agronomic utilization of sludge are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2009, c. 507, §1 (AMD) .]

## **2. Site location.**

[ 1993, c. 383, §35 (RP) .]

## **3. Municipal status reports.**

[ 1989, c. 585, Pt. E, §6 (RP) .]

**4. Technical assistance.** The commissioner is authorized to establish guidelines for effective waste management, to provide technical assistance to persons planning, constructing or operating waste facilities and to conduct applied research activities in the field of waste management, disposal technology and environmental effects, including methods of recycling hazardous or solid waste, sludge or septage.

[ 2011, c. 655, Pt. GG, §10 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**4-A. Right of entry.** For the purposes of enforcing any provision of this Act or of developing or enforcing any rule authorized by this Act, any duly authorized representative or employee of the department may, upon presentation of appropriate credentials, at any reasonable time:

A. Enter any establishment or other place which is not a residence, or any conveyance, where or in which hazardous or solid waste, sludge or septage is generated, handled or transported; [1981, c. 430, §8 (RPR) .]

B. Inspect and obtain samples of any hazardous or solid waste, sludge or septage, including samples from any conveyance in which hazardous or solid waste, sludge or septage is being or has been transported, as well as samples of any containers or labels; and [1981, c. 430, §9 (AMD) .]

C. Inspect and copy any records, reports, information or test results relating to hazardous or solid waste, sludge or septage. [1979, c. 383, §6 (NEW) .]

[ 1981, c. 430, §§7-9 (AMD) .]

#### **5. Planning grants.**

[ 1989, c. 585, Pt. E, §8 (RP) .]

#### **6. Study.**

[ 1981, c. 478, §3 (RP) .]

#### **7. Hazardous waste plan.**

[ 1981, c. 478, §3 (RP) .]

#### **8. Licenses for waste facilities.**

[ 1987, c. 517, §10 (RP) .]

#### **9. Restrictive covenants.**

[ 1983, c. 432, §5 (RP) .]

**10. Legislative review.** Rules adopted by the board under this section and section 1319-O, subsection 1 which impose standards or requirements more stringent than final regulations of the United States Environmental Protection Agency shall be submitted to the legislative committee having jurisdiction over energy and natural resources for review. Any rules adopted by the board under this section shall be submitted to the legislative committee having jurisdiction over energy and natural resources for review pursuant to Title 5, section 8053-A.

[ 1987, c. 517, §11 (AMD) .]

#### **11. Imported waste report.**

[ 1993, c. 355, §48 (RP) .]

**12. Compliance orders.** The commissioner may issue compliance orders subject to the provisions of this subsection.

A. Whenever, after investigation, the commissioner determines that there is or has been an unauthorized discharge of hazardous waste, constituents of hazardous waste, or waste oil into the environment where there is a reasonable basis to believe that the discharge is endangering or causing damage to public health or the environment or that any person has violated or is in violation of any requirement of this subchapter, including rules adopted thereunder, relating to hazardous waste or waste oil activities, he may issue an order requiring compliance immediately or within a specified time period or requiring corrective action or other response measures as necessary to protect the public health and safety or the environment.

The commissioner may require assurance of financial ability for completing corrective action and may require, where necessary, that corrective action be taken beyond a facility or site to remove the danger to the public health or the environment unless the person to whom the order is directed demonstrates to the commissioner that, despite that person's best efforts, he was unable to obtain the necessary permission to undertake such actions. [1987, c. 192, §25 (AMD).]

B. Any order issued under this subsection may be directed to any person who causes or caused or contributes or contributed to the discharge or violation. Such order shall contain findings of fact describing, insofar as possible, and with reasonable specificity, the nature of the discharge or violation, the wastes involved, the nature of the cause or contribution of the person with respect to the discharge or violation, the site of the activity, the required action, the time period for compliance and the danger to public health or safety of the environment. [1985, c. 746, §29 (NEW).]

C. Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure. [2005, c. 330, §26 (AMD).]

D. The person to whom the order is directed shall comply immediately or within a specified time period. That person may apply to the board within 10 working days after receipt of the order for a hearing on the order. Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing before the board is an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order is directed. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7. [2005, c. 330, §27 (AMD).]

[ 2005, c. 330, §§26, 27 (AMD) .]

**13. Innovative disposal and utilization.** Recognizing that environmentally suitable sites for waste disposal are in limited supply and represent a critical natural resource, the commissioner may investigate and implement with the approval of the board innovative programs for managing, utilizing and disposing of solid waste. Innovative programs may include agricultural and forest land spreading of wood-derived ash, utilization of ash resulting from combustion of municipal solid waste, paper mill sludges, municipal waste water treatment plant sludges and the composting of yard wastes. The commissioner shall first determine that the proposed innovative disposal and waste management programs are consistent with the state plan. The commissioner shall review proposed innovative programs for each waste category and shall apply all controls necessary to ensure the protection of the environment and public health consistent with this chapter. The board may adopt application review procedures designed to review individual applications and their individual waste sources with prior approval of classes of disposal or utilization sites. The board shall adopt provisions for municipal notification prior to use of individual utilization sites.

[ 2011, c. 655, Pt. GG, §11 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**13-A. Pulp and paper mill sludge; land spreading.** The provisions of this section apply only to land spreading and related storage of sludge generated at industrial facilities utilizing kraft wood pulping processes.

A. Subject to Title 5, section 9051-A, the board shall adopt provisions for public notification prior to use of individual utilization sites and storage sites. Notice to individuals shall be made by certified mail. [1989, c. 299, (NEW).]

B. The board shall establish, by rule, requirements for the siting, preparation of the site and operation of facilities, including stockpiles, used for the storage of sludge for a period of more than 30 days. The board shall incorporate the following provisions:

(1) The maximum storage period at facilities without impervious liners and leachate collection and treatment is 6 months. The department may waive this requirement on a case-by-case basis for a maximum of 2 additional months when the applicant has demonstrated that the storage facility is inaccessible or that utilization of the stored material would be in violation of any prohibition of land spreading on frozen, snow-covered or saturated ground.

(2) Sludge storage sites may not be located within 300 feet of a year-round river, stream, brook or pond nor within 75 feet of any intermittent stream or brook or any natural drainage way, including gullies, swales and ravines.

(3) Storage facilities without impervious liners and leachate collection systems may be used only once in any 10-year period. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §230 (AMD).]

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §230 (AMD) .]

**13-B. Municipal solid waste incinerator ash; rulemaking.** The board shall adopt rules establishing requirements for the use of municipal solid waste incinerator ash, referred to in this subsection as "ash." In developing these rules, the board shall consult with the Department of Transportation and the Maine Turnpike Authority on those issues relating to the use of ash in or on roads. In developing these rules, the board shall consider, but is not limited to considering, the following issues:

A. The feasibility and comparative health risk of using bottom ash versus using combined bottom ash and fly ash; [1997, c. 418, §1 (NEW).]

B. The risk to human health and the environment from toxic constituents of ash, including dioxin and heavy metals; [1997, c. 418, §1 (NEW).]

C. Site-specific restrictions and prohibitions on the use of ash, particularly on uses that might expose sensitive populations or sensitive natural resources to health or environmental risks; [1997, c. 418, §1 (NEW).]

D. Methods of tracking the physical location of ash in all initial and subsequent uses, and whether uses should be restricted to those that can be tracked; [1997, c. 418, §1 (NEW).]

E. Methods of state and municipal notification of activities involving the use of ash, which may include individual notice or permits for specific projects as needed; and [1997, c. 418, §1 (NEW).]

F. State and municipal liability in the case of a release or threat of release of a hazardous substance, hazardous waste, hazardous matter, special waste or contaminant into the environment resulting from the use of ash. [1997, c. 418, §1 (NEW).]

Rules adopted pursuant to this subsection must require that any risk assessment performed as part of an application for a license to use ash use the most current available data and methods and be reviewed by the Department of Health and Human Services, Bureau of Health in consultation with the department.

Except as specified in subsection 13-C, a person may not use ash without a license from the department issued pursuant to this subsection. The department may not process or act upon an application for a license under this subsection until rules are finally adopted by the board pursuant to this subsection. For purposes of this

subsection, the term "use" includes, but is not limited to, the following: use in a manufacturing process, use as aggregate for asphalt or concrete products, use in the construction industry, use as final landfill closure material and the use of a product manufactured from ash. The term "use" does not include transport, storage or disposal in a landfill licensed to accept ash.

Rules adopted pursuant to this subsection are major substantive rules under Title 5, chapter 375, subchapter II-A.

[ 1997, c. 418, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) . ]

**13-C. Use of treated ash in secure landfills.** Subject to the requirements of other applicable laws, a person may do the following without a license issued pursuant to subsection 13-B:

A. Process municipal solid waste incinerator ash to remove noncombusted materials, size the ash and reduce the solubility of metals contained within the ash; and [1997, c. 418, §1 (NEW) . ]

B. Use municipal solid waste incinerator ash processed in the manner specified in paragraph A as follows:

- (1) As landfill daily cover material in a secure landfill;
- (2) As construction material in a secure landfill; and
- (3) In pilot projects in a secure landfill. [1997, c. 418, §1 (NEW) . ]

The use of municipal solid waste incinerator ash pursuant to this subsection is limited to the lined areas within a secure landfill and each use must receive case-by-case approval from the department. Prior to approving the use of municipal solid waste incinerator ash in a secure landfill, the department shall ensure that the use provides adequate protection of human health and the environment.

For purposes of this subsection, the term "secure landfill" means a landfill that utilizes a liner system, a leachate collection and treatment system and a final cover system to minimize discharges of waste or leachate and control the release of gas to the environment.

[ 1997, c. 418, §1 (NEW) . ]

**13-D. Use of fish scales as crop nutrient supplements.** A person may use fish scales as a crop nutrient supplement without a license issued pursuant to this chapter as long as:

A. The department has reviewed the process by which the waste fish scales are generated and has approved the use of the scales as a soil amendment on crop farms; [1999, c. 283, §1 (NEW) . ]

B. The farm using fish scales as a supplement has developed and implemented a nutrient management plan in accordance with the provisions of Title 7, chapter 747 and in accordance with the Department of Agriculture, Conservation and Forestry's rules concerning nutrient management planning; and [1999, c. 283, §1 (NEW); 2011, c. 657, Pt. W, §5 (REV) . ]

C. The person supplying the fish scales provides the following information to the department within 7 days of shipping the fish scales with respect to each person receiving the scales:

- (1) The name of the person receiving the fish scales;
- (2) The location or locations where the fish scales will be used; and
- (3) The quantity of fish scales shipped. [1999, c. 283, §1 (NEW) . ]

[ 1999, c. 283, §1 (NEW); 2011, c. 657, Pt. W, §5 (REV) . ]

#### **14. Disposal fees.**

[ 1989, c. 585, Pt. E, §11 (RP) . ]

**15. Special services program.**

[ 1989, c. 585, Pt. E, §11 (RP) .]

**16. Wood yard debris.** The provisions of this chapter do not apply to soil containing incidental bark or woody material generated during the transport, handling or storage of logs prior to processing. For the purposes of this section, "processing" is defined to include the debarking, chipping and sawing of wood.

[ 1991, c. 643, §1 (NEW) .]

**17. Sludge and septage guidance.** The commissioner shall develop guidance to municipalities regarding the regulation of septage and sludge land application by municipalities. The guidance must include information regarding site location restrictions, testing and enforcement actions that may be undertaken by a municipality and municipal roles and responsibilities under section 1310-U.

[ 2001, c. 247, §2 (NEW) .]

**18. Use of residuals containing human pathogens.** The department may not license the utilization and distribution of residuals containing human pathogens, such as municipal treatment plant sludge, under permit-by-rule provisions established by the department pursuant to the provisions of section 344, subsection 7.

[ 2003, c. 231, §1 (NEW) .]

**19. Interested parties notice for distribution of composted sludge.** The department shall establish and maintain a list of interested parties, including a statewide organization that represents municipalities in this State, to whom notice of license applications and applications to modify existing licenses for the distribution in this State of composted sludge must be provided. In addition, the department shall electronically mail the notice to each municipality in the State that is equipped to receive electronic mail. Notice must be provided upon the department's finding that the application is complete for processing.

[ 2003, c. 231, §1 (NEW) .]

**SECTION HISTORY**

1973, c. 387, (NEW). 1975, c. 577, (AMD). 1977, c. 300, §§52,53 (AMD). 1979, c. 383, §§3-8 (AMD). 1979, c. 472, §16 (AMD). 1979, c. 663, §236 (AMD). 1979, c. 699, §§10-12 (AMD). 1981, c. 303, §1 (AMD). 1981, c. 430, §§7-11 (AMD). 1981, c. 470, §A171 (AMD). 1981, c. 478, §§3,4 (AMD). 1981, c. 698, §191 (AMD). 1983, c. 432, §5 (AMD). 1985, c. 157, (AMD). 1985, c. 746, §29 (AMD). 1985, c. 822, §4 (AMD). 1987, c. 192, §§25,26 (AMD). 1987, c. 517, §§9-12 (AMD). 1987, c. 883, §1 (AMD). 1989, c. 299, (AMD). 1989, c. 585, §§E5-11 (AMD). 1989, c. 890, §§A40,B226, 227 (AMD). 1991, c. 72, §3 (AMD). 1991, c. 643, §1 (AMD). 1991, c. 824, §A87 (AMD). 1993, c. 355, §48 (AMD). 1993, c. 383, §35 (AMD). 1995, c. 656, §§A22,23 (AMD). 1997, c. 418, §1 (AMD). 1999, c. 283, §1 (AMD). 1999, c. 385, §3 (AMD). 1999, c. 393, §2 (AMD). 2001, c. 247, §2 (AMD). 2003, c. 231, §1 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 330, §§26,27 (AMD). 2009, c. 507, §1 (AMD). 2011, c. 655, Pt. GG, §§10, 11 (AMD). 2011, c. 655, Pt. GG, §70 (AFF). 2011, c. 657, Pt. W, §5 (REV).

**§1304-A. DATA; FACILITY NEEDS PLAN**

*(REALLOCATED TO TITLE 38, SECTION 1319-Q)*

**SECTION HISTORY**

1981, c. 478, §5 (NEW). 1983, c. 432, §6 (AMD). 1985, c. 481, §A97 (AMD). 1987, c. 517, §13 (RAL).

## **§1304-B. DELIVERY OF SOLID WASTES TO SPECIFIC WASTE FACILITIES**

**1. Findings and purpose.** The Legislature makes the following findings of fact. Subject to the provisions of chapter 24, the State requires each municipality to provide for disposal services for domestic and commercial solid waste generated within the municipality. Solid waste contains valuable recoverable resources, including energy. Many municipalities have found that energy recovery reduces the cost of solid waste disposal. Energy recovery technology is complex and the equipment requires a steady supply of waste to operate efficiently. Because of the complicated technology, most energy recovery facilities have high capital costs and long payback periods. In order to remain cost effective throughout their lives, these energy recovery facilities require a guaranteed, steady supply of waste. Consequently, municipalities utilizing energy recovery facilities are usually required to enter long-term agreements to provide the facilities with specific amounts of waste. In order to make these energy recovery facilities financially feasible, and thereby simultaneously improve the environmental impacts and the economics of municipal solid waste disposal, municipalities shall have the legal authority to control the handling of solid waste generated within their borders.

The purpose of this section is to promote the recovery of resources from solid waste by creating one of the conditions which make energy recovery economically feasible, assuring municipalities the authority to guarantee a steady supply of solid waste to specific waste facilities.

[ 1989, c. 585, Pt. E, §12 (AMD) .]

**2. Flow control.** Subject to the provisions of chapter 24, municipalities are expressly authorized to enact ordinances that control solid waste collection, its transportation or its delivery to a specific facility, when the purpose and effect of such an ordinance is to gain management control over solid waste and enable the reclamation of resources, including energy, from these wastes. This authorization includes, but is not limited to, ordinances:

- A. Requiring segregation of wastes; [1987, c. 517, §14 (AMD) .]
- B. Requiring delivery of wastes generated within the municipality, or any portion of those wastes, to a designated disposal or reclamation facility; [1991, c. 72, §4 (AMD) .]
- C. Designating certain materials as recyclable and exempt from the provisions of paragraph B; and [1991, c. 72, §5 (AMD) .]
- D. Designating yard wastes as compost material and requiring delivery of these wastes to a designated composting facility. [1991, c. 72, §6 (NEW) .]

[ 1991, c. 72, §§4-6 (AMD) .]

### **3. Ordinances.**

[ 1989, c. 585, Pt. E, §14 (RP) .]

**4. Contracts.** In order to encourage and facilitate the financing and development of solid waste facilities, including, but not limited to, facilities for resource recovery, municipalities shall have the following powers, notwithstanding any law, charter, ordinance provision or limitation to the contrary:

- A. To contract with a corporation described in subsection 5 or a refuse disposal district organized under chapter 17 or any person, including, but not limited to, the owner or operator of any waste facility, for the collection, transportation, storage, processing, salvaging or disposal of waste. Any such contract may be for such term of years and may contain such other provisions as the municipality may approve. Any such contract may provide that, in consideration for the obligation of the facility owner or operator

to handle all or any portion of the solid waste generated in the municipality, the municipality shall pay to the facility owner or operator such fees, assessments and other payments as shall be established in accordance with the contract. [1985, c. 593, §8 (AMD).]

B. Without limiting the generality of the powers conferred in paragraph A, to agree in such a contract to pay fees, assessments or other payments in such amounts as may be reasonably necessary to pay:

(1) Costs associated with financing, developing, constructing, repairing, maintaining and operating all or any one or more of the waste facilities owned or operated by the facility owner or operator, including, but not limited to, the payment of debt service and the maintenance of reasonable reserves or sinking funds in connection with the financing or operation of any such waste facilities;

(2) Any other costs incurred by the facility owner or operator in connection with the handling of solid waste, whether performed at any waste facility referred to in subparagraph (1) or at another such facility differently owned and operated; and

(3) Any deficiencies arising by virtue of the failure of any other municipality so agreeing to meet its obligations to pay the costs set forth in subparagraphs (1) and (2) in accordance with any similar agreement with the same facility owner; and [1985, c. 593, §8 (AMD).]

C. To pledge the full faith and credit of the municipality for the payment of fees, assessments and other payments, as provided in paragraphs A and B, and to levy upon and raise from taxable estates within the municipality by general taxes the amounts required to pay these fees, assessments and payments or to raise those amounts by means of any fee, user charge or other cost-sharing or assessment mechanism duly adopted and authorized by the municipality or to borrow those amounts by issuance of general obligation bonds or notes. [1985, c. 337, §3 (NEW).]

Any contract complying with the requirements of this subsection and subsection 6 shall be a properly authorized, legal, valid, binding and enforceable obligation of the municipality, regardless of whether the agreement was authorized, executed or delivered prior to or after the effective date of this subsection.

[ 1985, c. 593, §8 (AMD) .]

**4-A. Contract limitations.** Any contract, including any contract in existence on the effective date of this subsection, for the provision of waste disposal, transportation or handling services to municipalities is subject to the following limitations.

A. No contract for waste disposal, transportation or handling services may prevent a municipality from recycling any portion of its solid waste, provided that any minimum BTU content level and minimum tonnage level required by that contract is maintained by the municipality. [1987, c. 517, §17 (NEW) .]

B. No contract for waste disposal, transportation or handling services may prevent a municipality from meeting its obligations to supply a minimum BTU content level and minimum tonnage level required by that contract using solid waste generated outside its borders, provided that:

(1) The municipality is or will be unable, as the direct result of recycling or source reduction efforts, to meet the obligations using solid waste generated within its jurisdiction; and

(2) The municipality is liable for any damages caused by any solid waste it relies upon to satisfy the provisions of its contract. [1987, c. 517, §17 (NEW) .]

C. For those waste disposal, transportation or handling services contracts which do not principally rely upon requiring minimum BTU content level or minimum tonnage level to secure solid waste for the waste disposal facility, but which instead rely upon a requirement that the municipality provide all or most of its solid waste to the waste disposal facility, no such contract may prohibit a municipality during the term of the contract from recycling those materials which the municipality determines to be recyclable. [1987, c. 517, §17 (NEW) .]



D. A municipality that anticipates that it will be unable to meet its contract obligation to supply a minimum BTU content level or minimum tonnage due to waste reduction or recycling programs and is unable to reach an agreement with the incinerator for the anticipated reduction may request the department to intercede. The department shall assist the incinerator in soliciting solid waste to mitigate any anticipated shortfall in minimum BTU content level or minimum tonnage. If no agreement on mitigation of an anticipated shortfall is reached, the terms of the original contract prevail, except as otherwise provided in this chapter. [2011, c. 655, Pt. GG, §12 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

[ 2011, c. 655, Pt. GG, §12 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**5. Public waste disposal corporations.** Notwithstanding any law, charter, ordinance provision or limitation to the contrary, pursuant to an interlocal agreement entered into in accordance with Title 30-A, chapter 115, 2 or more municipalities may organize or cause to be organized or may participate in one or more corporations organized as nonprofit corporations under Title 13, chapter 81 or Title 13-B for the purpose, among other permissible purposes, of owning or operating one or more waste facilities described in subsection 4, paragraph A. A subscribing municipality may agree in an interlocal agreement to pay fees, assessments or other payments as described in subsection 4, paragraph B for such a term of years and on such other terms as the interlocal agreement may provide and may pledge the full faith and credit of the municipality to the same extent provided in subsection 4, paragraph C. The applicable interlocal agreement or the articles of incorporation or the bylaws of the corporation may provide that the municipal officers of a municipality participating in the corporation may appoint an alternate director or alternate directors to act as the municipality's representative to the corporation's board of directors in the absence of the director or directors elected by the municipal officers. A corporation described in this subsection is a public municipal corporation as that term is used in Title 36, section 651, subsection 1, paragraph D, and its real and personal property located in subscribing, participating and associate member municipalities is exempt from municipal property taxation to the extent provided by Title 36, section 651, subsection 1, paragraph D. The applicable interlocal agreement or the articles of incorporation or bylaws of the corporation must provide that:

A. The corporation must be organized and continuously thereafter operated as a nonprofit corporation, no part of the net earnings of which may inure to the benefit of any member, director, officer or other private person; [1995, c. 81, §1 (AMD).]

B. The directors of the corporation must be elected by the municipal officers of the municipalities participating in the corporation; and [1995, c. 81, §1 (AMD).]

C. Upon dissolution or liquidation of the corporation, title to all of its property vests in one or more of the municipalities participating in the corporation. [1995, c. 81, §1 (AMD).]

Any interlocal agreement complying with the requirements of this subsection and subsection 6 must be a properly authorized, legal, valid, binding and enforceable obligation of the municipality, regardless of whether the agreement was authorized, executed or delivered prior to or after the effective date of this subsection. Any corporation organized in a manner that satisfies the requirements set forth in this subsection and subsection 6, whether organized prior to or after the effective date of this subsection, is deemed for all purposes as organized pursuant to this subsection. If so provided in the applicable interlocal agreement, any such corporation has the power, in addition to any other powers that may be delegated under Title 30-A, chapter 115, to issue, on behalf of one or more of the municipalities participating in the corporation, in order to finance the facilities, revenue obligation securities issued in accordance with Title 10, chapter 110, subchapter 4 and any other bonds, notes or debt obligations that municipalities are authorized to issue by applicable law. For these purposes, the term "municipal officers" as used in Title 10, chapter 110, subchapter 4 means the board of directors of any corporation described in this subsection. Title 10, section 1064, subsection 6 may not be construed to prohibit the assignment or pledge as collateral security of any contract of a municipality authorized by this section or of any or all of the payments under this section, regardless of whether the provisions of subsection 4, paragraph C are applicable to the contract or payments. The

provisions of Title 10, sections 1063 and 1064, subsection 1, paragraph A and paragraph C, subparagraph (4) do not apply to revenue obligation securities issued by any public waste disposal corporation described in this subsection.

[ 2007, c. 91, §1 (AMD) . ]

**5-A. Other regional associations.** Notwithstanding any law, charter, ordinance provision or limitation to the contrary, any 2 or more municipalities, counties, refuse disposal districts, public waste disposal corporations or other quasi-municipal corporations may organize or cause to be organized or may acquire membership in one or more regional associations for the purpose, among other permissible purposes, of facilitating the disposal of domestic and commercial solid waste generated within the geographic boundaries of each member of the regional association. In accordance with this subsection, a regional association may conduct business without an interlocal agreement.

A. The articles of incorporation or bylaws of the regional association must provide that:

- (1) The regional association must be organized and continuously operated as a nonprofit corporation, no part of the net earnings of which may inure to the benefit of any member, director, officer or other private person; the receipt, directing and application of money in accordance with paragraph E may not be considered to be part of the net earnings, income or profit of the regional association;
- (2) The directors of the regional association must be elected by the municipal officers, the trustees or the directors, as applicable, of the members of the regional association; and
- (3) Upon dissolution or liquidation of the corporation, title to all of its property vests in one or more of the municipalities participating in the regional association. [1997, c. 602, §2 (NEW); 1997, c. 602, §3 (AFF).]

B. Each member must enter into at least one solid waste disposal agreement with the owners of at least one solid waste disposal facility, including, but not limited to, a solid waste disposal facility that is a qualifying facility as defined in Title 35-A, section 3303. [1997, c. 602, §2 (NEW); 1997, c. 602, §3 (AFF).]

C. Each member must be in good standing with the regional association and abide by the bylaws of the regional association. [1997, c. 602, §2 (NEW); 1997, c. 602, §3 (AFF).]

D. Notwithstanding any limitation imposed by Title 30-A, chapter 223, subchapter III-A, or any other limitation on investments imposed on a member pursuant to state law, each member may invest its funds in and participate in the ownership of:

- (1) One or more solid waste disposal facilities;
- (2) An entity that owns one or more solid waste disposal facilities;
- (3) A transmission and distribution utility that has a power purchase agreement with the owners of a solid waste disposal facility that, in turn, has a solid waste disposal contract with the member;
- (4) A competitive electricity provider, as defined in Title 35-A, section 3201, affiliated with a public utility whether or not it is regulated by the Public Utilities Commission or a successor state agency; and
- (5) A subsidiary entity formed by a transmission and distribution utility. [1999, c. 657, §26 (AMD) . ]

E. To the extent provided in its bylaws, a regional association may perform the following functions, among others, on behalf of its members:

- (1) Receive and direct distributions of cash from and ownership interests in the entities described in paragraph D as well as other revenues from activities authorized under this subsection, including, but not limited to:

- (a) Distribution on behalf of members based on a minimum tonnage guaranteed to be delivered or actually delivered to solid waste disposal facilities; and
- (b) Earnings and other distributions from the members' investments in and participation in the entities described in paragraph D in the form of capital stock, limited partnership interest, warrants for equity interest or other equity positions in entities;
- (2) Manage assets of its members that are related to the functions of the regional association, including, but not limited to, functions related to the entities described in paragraph D;
- (3) Manage money or other value received on account of members from any source;
- (4) Determine the use and application of assets on behalf of and for the benefit of its members, including investment and reinvestment in the entities described in paragraph D;
- (5) Purchase, sell and otherwise deal with ownership interests, including the authority to exercise warrants for the purpose of making any purchase, in the entities described in paragraph D; and
- (6) Administer the solid waste disposal agreement described in paragraph B and act as agent for its members under and pursuant to and to the extent provided by the solid waste disposal agreement, including the authority to bind its members through arbitration proceedings. [1997, c. 602, §2 (NEW); 1997, c. 602, §3 (AFF).]

F. A regional association may receive, direct and apply money as described in paragraph E without the need for further action by any member by appropriation or otherwise and, unless otherwise provided by a member in connection with its participation in a regional association, that money may not be taken into account for purposes of calculating any limitation on the member's annual expenditures or appropriations. [1997, c. 602, §2 (NEW); 1997, c. 602, §3 (AFF).]

A regional association may not pledge the full faith and credit of its members but it has all other powers necessary and incidental to carry out the purposes of this chapter. Notwithstanding any contrary provision in Title 13-B, a regional association may have more than one class of members as prescribed or established in its bylaws.

[ 1999, c. 657, §26 (AMD) .]

**6. Relationship to other laws.** The obligation of a municipality to pay any fees, assessments or other payments in accordance with any agreement entered into pursuant to subsection 4 or any interlocal agreement referred to in subsection 5 shall not constitute a "debt" or "indebtedness" of the municipality within the meaning of any statutory, charter or ordinance provision limiting the incurrence or the amount of municipal indebtedness nor shall the authorization or incurrence of the obligation or any municipal action to raise funds to meet the obligation by any means set forth in subsection 4, paragraph C, require or be subject to any voter referendum or approval under any law or any charter or ordinance provision.

A. A municipality may agree to make payments in accordance with subsection 4, paragraph B, or in accordance with the provisions of any interlocal agreement referred to in subsection 5 with regard to all or any portion of debt incurred or to be incurred for the financing of one or more waste facilities, provided that no such payments shall be made with respect to debt or any portion of debt which, when incurred, would cause the total principal balance of all then outstanding debt or portions of debt to which the payments apply to exceed:

- (1) Three percent of the last full state valuation of the municipality; minus
- (2) The municipality's then obtaining allocable share of any debt or portions of debt described in paragraph B with regard to which it is obliged to make payments. [1985, c. 593, §10 (NEW) .]

B. Notwithstanding paragraph A, 2 or more municipalities may agree to make payments in accordance with subsection 4, paragraph B, or in accordance with any interlocal agreement referred to in subsection 5 with regard to all or any portion of debt incurred or to be incurred for the financing of one or more

waste facilities, provided that no such payments may be made with respect to debt or any portions of debts which, when incurred, would cause the total principal balance of all then outstanding debt or portions of debt to which the payments apply to exceed:

- (1) Three percent of the sum of the last full state valuation of all municipalities so agreeing; minus
- (2) Any amounts of debt or portions of debt described in paragraph A in connection with which any such municipality is obliged to make payments.

The limitations set forth in paragraphs A and B shall only apply to agreements by which a municipality or group of municipalities have agreed to make payments directly based, among other things, on a facility owner's costs of debt service and other costs of financing and shall not be construed to apply to contract payments calculated on any other basis, even if the facility owner uses the payments to meet its debt service obligations. [1985, c. 593, §10 (NEW).]

The obligation of the municipality to pay fees, assessments and other payments in accordance with subsection 4 or any interlocal agreement referred to in subsection 5 shall be binding upon and enforceable against the municipality without regard to whether all or any one or more of the waste facilities referred to in subsection 4, paragraph B, subparagraph (1), becomes operational or was or will be in operation during the period for which the fees, assessments or other payments are so charged.

No contract entered into in accordance with subsection 4 nor any ordinance adopted under the authority of subsection 2 may be deemed a contract in restraint of trade or otherwise unlawful under Title 10, chapter 201.

Notwithstanding any law, charter or ordinance provisions to the contrary, the powers conferred upon a municipality pursuant to subsections 4 and 5 and this subsection may be exercised by the municipal officers as defined in Title 30-A, section 2001, including the assessors of a plantation, only when authorized, in the case of a municipality with a city or town council, by action of the council and, in the case of a municipality without such a council, by action of the town meeting. This paragraph shall apply whether or not the action of the city council, town council or town meeting was taken before or after March 21, 1986.

Nothing in this section may be construed to be a limitation on the Home Rule powers granted to municipalities under Title 30-A, section 3001, or on the ability of communities to jointly exercise their powers as is recognized in Title 30-A, section 2201. This section provides an additional and alternative method for carrying out this subchapter.

[ 1987, c. 737, Pt. C, §§96, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

**7. Subjugation.** Notwithstanding any provision of this section to the contrary, the exercise of any power or authority granted under this section is subject to the provisions of chapter 24.

[ 1989, c. 585, Pt. E, §16 (NEW) .]

#### SECTION HISTORY

1983, c. 380, §1 (NEW). 1983, c. 726, §1 (AMD). 1983, c. 743, §16 (AMD). 1985, c. 337, §§3,4 (AMD). 1985, c. 506, §B38 (AMD). 1985, c. 593, §§8-10 (AMD). 1987, c. 517, §§14-17 (AMD). 1987, c. 737, §§C95,C96, C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 585, §§E12-16 (AMD). 1989, c. 869, §C10 (AMD). 1991, c. 72, §§4-6 (AMD). 1995, c. 81, §1 (AMD). 1995, c. 656, §A24 (AMD). 1997, c. 602, §2 (AMD). 1997, c. 602, §3 (AFF). 1999, c. 657, §26 (AMD). 2007, c. 91, §1 (AMD). 2011, c. 655, Pt. GG, §12 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

## **§1304-C. REPORT; MATERIAL-SEPARATED, REFUSE-DERIVED FUEL**

Beginning on January 1, 1992, a municipal solid waste processing facility that produces any material-separated, refuse-derived fuel shall annually report the following information to the department: [ 1991 , c. 220 , §11 (NEW) . ]

**1. Total weight.** The total weight of municipal solid waste accepted by the facility during the previous 12 months by material category;

[ 1991 , c. 220 , §11 (NEW) . ]

**2. Recycled weight.** The weight of the municipal solid waste recycled by the facility during the previous 12 months by material category;

[ 1991 , c. 220 , §11 (NEW) . ]

**3. Material-separated, refuse-derived fuel production.** The weight of material-separated, refuse-derived fuel produced by the facility during the previous 12 months; and

[ 1991 , c. 220 , §11 (NEW) . ]

**4. Disposition of remaining waste.** The disposition of any remaining waste.

[ 1991 , c. 220 , §11 (NEW) . ]

### SECTION HISTORY

1991, c. 220, §11 (NEW).

## **§1305. MUNICIPALITIES; POWERS AND DUTIES**

**1. Disposal services.** Each municipality shall provide solid waste disposal services for domestic and commercial solid waste generated within the municipality and may provide these services for industrial wastes and sewage treatment plant sludge.

[ 1989 , c. 585 , Pt. E , §17 (RPR) . ]

**2. Ordinances.**

[ 1983 , c. 816 , Pt. A , §43 (RP) . ]

**3.**

[ 1983 , c. 380 , §3 (RP) . ]

**4. Municipal status reports.**

[ 1989 , c. 585 , Pt. E , §18 (RP) . ]

**5. Municipal permits.** All permits issued pursuant to Title 30-A, chapter 183, subchapter I, shall, in addition to requirements imposed by those sections, be conditioned on compliance with rules adopted by the board concerning the operation of solid waste disposal facilities. Copies of permits issued by the municipality must be submitted to the commissioner within 30 days of issue.

[ 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §231 (AMD) .]

**6. Municipal septage sites.** Each municipality shall provide for the disposal of all refuse, effluent, sludge and any other materials from all septic tanks and cesspools located within the municipality. In addition, any person may provide a site for disposal of septage. In addition to making application to the Department of Environmental Protection for approval of any site, that person shall have written approval for the site location from the municipality in which it is located, unless the site is located in a Resource Protection District under the jurisdiction of the Maine Land Use Planning Commission. A municipality may determine whether approval of the site must be obtained first from the department or the municipality. The municipal officers shall approve, after hearing, any such private site if they find that the site complies with municipal ordinances and with local zoning and land use controls. In the absence of applicable municipal ordinances and local zoning and land use controls, the municipality shall base its approval of the site on compliance with the siting and design standards in the department's rules relating to septage management. For purposes of this subsection, "municipality" means a city, town or plantation.

[ 1997, c. 40, §1 (AMD); 2011, c. 682, §38 (REV) .]

**7. On-site disposal of domestic septage; enforcement.** Municipalities shall enforce the provisions of section 1306, subsection 2. Municipalities may recover all costs of enforcement, including attorneys' fees, from a septage pumper who violates the provisions of that subsection.

[ 1983, c. 726, §2 (NEW) .]

**8. Septage and sludge permits; municipal enforcement.** Pursuant to Title 30-A, section 4452, subsection 6, a municipality, after notifying the department, may enforce the terms and conditions of a septage land disposal or storage site permit or a sludge land application or storage site permit issued by the department under this subchapter.

[ 1997, c. 38, §2 (AMD) .]

**9. Coordination between municipality and department.** Coordination between the department and a municipality concerning applications and modifications in the terms or conditions of a permit or license for a sludge land application site or storage facility is governed by this subsection.

A. Within 14 working days of its receipt of a complete application for a sludge land application site or storage facility, the department shall notify the municipal officers or their designees from the municipality in which the site or facility would be located of the application and the name and address of the applicant. The department shall provide the municipal officers with copies of all test results performed on the sludge material that is proposed to be spread in that municipality. Prior to approving an application for a sludge land application site or storage facility, the department shall consult with the municipal officers or their designees in the municipality in which the site or facility is proposed and provide them with an opportunity to suggest conditions, including additional setbacks, to be imposed on a permit or license. If the department does not impose conditions on a permit or license that have been suggested in writing by the municipal officers, the department shall provide a written explanation to the municipal officers. [1999, c. 393, §3 (NEW) .]

B. The department shall consult with the municipal officers within 10 days of receiving a request by the sludge generator to change the terms or conditions of a permit or license. The municipality may petition the commissioner to review a generating facility's testing protocol for sludge. The commissioner shall

respond to the municipality in writing within 10 days of the municipality's petition. The commissioner may order the applicant to conduct an additional test at the applicant's cost. A copy of the additional test results must be provided to the municipal officers. [1999, c. 393, §3 (NEW).]

[ 1999, c. 393, §3 (RPR) .]

#### SECTION HISTORY

1973, c. 387, (NEW). 1979, c. 383, §9 (AMD). 1979, c. 541, §A277 (AMD). 1983, c. 11, (AMD). 1983, c. 380, §§2,3 (AMD). 1983, c. 726, §2 (AMD). 1983, c. 816, §A43 (AMD). 1985, c. 27, (AMD). 1987, c. 737, §§C97,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 585, §§E17,E18 (AMD). 1989, c. 890, §§A40,B231 (AMD). 1991, c. 499, §21 (AMD). 1991, c. 732, §5 (AMD). 1997, c. 38, §§2-4 (AMD). 1997, c. 40, §1 (AMD). 1999, c. 393, §§3,4 (AMD). 2011, c. 682, §38 (REV).

### **§1305-A. MUNICIPAL PARTICIPATION FOR COMMERCIAL HAZARDOUS WASTE FACILITIES**

*(REPEALED)*

#### SECTION HISTORY

1981, c. 478, §6 (NEW). 1981, c. 653, §§1-3 (AMD). 1985, c. 737, §A113 (AMD). 1987, c. 517, §18 (RP).

### **§1305-B. MUNICIPAL NOTICE OF DECOMMISSIONING WASTE**

**1. Disposal; notice.** A person may not dispose of decommissioning waste or transfer decommissioning waste to a facility defined in section 1303-C, subsection 30 or 31 in this State without giving notice to the municipality in which the decommissioning waste is to be disposed of. Notice must be given at least 5 working days before the first scheduled disposal. The notice must include:

- A. The type of decommissioning waste to be delivered to the facility; [1999, c. 739, §2 (AMD) .]
- B. The anticipated amount of decommissioning waste to be delivered to the facility; [1999, c. 739, §2 (AMD) .]
- C. The anticipated number of loads that will be delivered to the facility; and [1999, c. 739, §2 (AMD) .]
- D. The estimated delivery schedule of the decommissioning waste, including dates for delivery. [1999, c. 366, §1 (NEW) .]

[ 1999, c. 739, §2 (AMD) .]

**2. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Decommissioning waste" means any materials, whether solid or fluid, removed from a closed nuclear power plant, other than:
  - (1) Licensed discharges from the plant; and
  - (2) High-level radioactive waste and low-level radioactive waste regulated under chapter 14-A. [1999, c. 366, §1 (NEW) .]

B. "Dispose of" means to deposit or attempt to deposit in the land or waters of this State. [ 1999, c. 366, §1 (NEW). ]

[ 1999, c. 366, §1 (NEW) . ]

#### SECTION HISTORY

1999, c. 366, §1 (NEW). 1999, c. 739, §2 (AMD).

## §1306. PROHIBITION

**1. General prohibition.** It is unlawful for any person to establish, construct, alter or operate any waste facility without a permit issued by the department.

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §232 (AMD) . ]

**2. On-site disposal of domestic septage; penalty.** A homeowner may arrange for a septage pumper to dispose of septage from a residence on property of the owner of the residence at the request of the property owner, a maximum of 2 times a year, provided that the septage is placed at least 300 feet from property boundaries, fresh surface waters, tidal waters, water supplies, streets, highways and permanently or seasonally inhabited residential structures. Any homeowner or septage pumper who violates the provisions of this subsection shall be subject to a civil penalty, payable to the municipality, of not more than \$1,000 for each day of violation.

[ 1985, c. 612, §19 (AMD) . ]

**3. Discharge of hazardous waste.** The discharge of hazardous waste into or upon any waters of the State, or into or upon any land within the State's territorial boundaries or into the ambient air, is prohibited unless licensed or authorized under state or federal law.

[ 1985, c. 481, Pt. A, §98 (NEW) . ]

**4. Cathode ray tube disposal.** Beginning 9 months after the department adopts rules pursuant to section 1610, subsection 5, paragraph D, subparagraph (1), a person may not dispose of a cathode ray tube in a solid waste disposal facility. This subsection may not be construed to affect existing laws, rules or regulations governing disposal of cathode ray tubes in effect prior to the adoption of rules pursuant to section 1610, subsection 5, paragraph D, subparagraph (1).

[ 2005, c. 330, §28 (AMD) . ]

**5. Control of fluids from motor vehicles at junkyards, automobile graveyards and automobile recycling businesses.** Fluids must be controlled in accordance with the following.

A. All fluids, including but not limited to engine lubricant, transmission fluid, brake fluid, power steering fluid, hydraulic fluid, engine coolant, gasoline, diesel fuel, oil and refrigerant, batteries and mercury switches must be properly handled by junkyards, automobile graveyards and automobile recycling businesses in such a manner that they do not leak, flow or discharge into or onto the ground, into a body of water or into the air. [ 2005, c. 247, §6 (NEW); 2005, c. 247, §7 (AFF) . ]

B. All fluids, refrigerant, batteries and mercury switches must be removed from motor vehicles that lack engines or other parts that render the vehicles incapable of being driven under their own motor power or that are otherwise incapable of being driven under their own motor power, appliances and other items within 180 days of acquisition by a junkyard, automobile graveyard or automobile recycling business. Motor vehicles, appliances and other items acquired by and on the premises of a junkyard, automobile graveyard or automobile recycling business prior to October 1, 2005 must have all fluids, refrigerant,



batteries and mercury switches removed by January 1, 2007. Fluids required to be removed under this paragraph must be removed to the greatest extent practicable. [2005, c. 247, §6 (NEW); 2005, c. 247, §7 (AFF).]

C. A person may not crush, shred or otherwise process, or cause to be crushed, shredded or otherwise processed, motor vehicles, appliances or other items before removal of all fluids, refrigerant, batteries and mercury switches. Fluids required to be removed under this paragraph must be removed to the greatest extent practicable. [2005, c. 247, §6 (NEW); 2005, c. 247, §7 (AFF).]

[ 2005, c. 247, §6 (NEW); 2005, c. 247, §7 (AFF) .]

**6. Construction and demolition debris.** The substitution of wood from construction and demolition debris for conventional fuels used in a boiler may not exceed 50% of total fuel by weight combusted on an average annual basis.

[ 2005, c. 617, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 387, (NEW). 1979, c. 383, §10 (RPR). 1979, c. 663, §237 (AMD). 1979, c. 699, §13 (RP). 1981, c. 430, §12 (RPR). 1983, c. 726, §3 (RPR). 1985, c. 481, §A98 (AMD). 1985, c. 612, §19 (AMD). 1989, c. 890, §§A40,B232 (AMD). 2003, c. 150, §1 (AMD). 2005, c. 247, §6 (AMD). 2005, c. 247, §7 (AFF). 2005, c. 330, §28 (AMD). 2005, c. 617, §1 (AMD).

### **§1306-A. CRIMINAL PROVISIONS**

*(REPEALED)*

#### SECTION HISTORY

1979, c. 699, §14 (NEW). 1981, c. 375, (AMD). 1981, c. 430, §§13-16 (AMD). 1987, c. 517, §19 (RP).

### **§1306-B. FORFEITURE; CIVIL LIABILITY**

*(REPEALED)*

#### SECTION HISTORY

1979, c. 699, §15 (NEW). 1981, c. 430, §17 (RP).

### **§1306-C. FORFEITURE; CIVIL LIABILITY**

*(REALLOCATED TO TITLE 38, SECTION 1319-U)*

#### SECTION HISTORY

1981, c. 430, §18 (NEW). 1983, c. 432, §7 (AMD). 1983, c. 785, §14 (AMD). 1985, c. 785, §A113 (AMD). 1987, c. 517, §20 (RAL).

### **§1307. VIOLATIONS**

*(REPEALED)*

#### SECTION HISTORY

1973, c. 387, (NEW). 1977, c. 300, §54 (RP).

## §1308. EXEMPTIONS

Rules and regulations adopted pursuant to this chapter concerning the location, establishment and construction of solid waste disposal facilities, but not concerning alteration or operation, shall not affect such facilities in existence prior to October 3, 1973. Landscape refuse and fill disposal sites established in connection with public works projects and commonly known as "stump dumps" are exempt from this chapter. [1973, c. 788, §213 (AMD).]

### SECTION HISTORY

1973, c. 387, (NEW). 1973, c. 788, §213 (AMD).

## §1308-A. HAZARDOUS WASTE FACILITY CLOSURE

*(REALLOCATED TO TITLE 38, SECTION 1319-S)*

### SECTION HISTORY

1981, c. 303, §2 (NEW). 1983, c. 432, §8 (AMD). 1987, c. 517, §21 (RAL).

## §1309. INTERSTATE COOPERATION

The Legislature encourages cooperative activities by the department with other states for the improved management of hazardous and solid waste; for improved, and as far as is practicable, uniform state laws relating to the management of hazardous and solid waste; and compacts between this and other states for the improved management of hazardous and solid waste. [2011, c. 655, Pt. GG, §13 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

### SECTION HISTORY

1979, c. 383, §11 (NEW). 1987, c. 517, §22 (AMD). 1989, c. 585, §E19 (AMD). 2001, c. 22, §1 (AMD). 2011, c. 655, Pt. GG, §13 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

## §1310. EMERGENCY

If the commissioner finds, after investigation, that any waste, whether or not hazardous waste, is being handled, transported or otherwise dealt with in a manner which may create a danger to public health or safety, he may order any person handling, transporting or otherwise dealing with the waste to immediately cease or prevent that activity and to take such action as may be necessary to terminate or mitigate the danger or likelihood of danger. He may also order any person contributing to the danger or likelihood of danger to cease or prevent that contribution. [1981, c. 430, §19 (RPR).]

Any order issued under this section shall contain findings of fact describing, insofar as possible, the waste, the site of the activity and the danger to the public health or safety. [1979, c. 699, §16 (RPR).]

Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure. [2005, c. 330, §29 (AMD).]

The person to whom the order is directed shall comply immediately. An order may not be appealed to the Superior Court, but a person to whom it is directed may apply to the board for a hearing on the order if the application is made within 10 working days after receipt of the order by the person to whom the order was directed. Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing before the board is an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first establish the basis

for the order and for naming the person to whom the order is directed. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7. [ 2005, c. 330, § 30 (AMD) . ]

#### SECTION HISTORY

1979, c. 383, §11 (NEW). 1979, c. 699, §16 (RPR). 1981, c. 430, §19 (AMD). 1987, c. 192, §27 (AMD). 2005, c. 330, §§29,30 (AMD).

### **§1310-A. MUNICIPAL HAZARDOUS WASTE CONTROL**

*(REALLOCATED FROM TITLE 38, SECTION 1311)*

*(REALLOCATED TO TITLE 38, SECTION 1319-P)*

#### SECTION HISTORY

1979, c. 663, §238 (RAL). 1987, c. 517, §23 (RAL).

### **§1310-B. CONFIDENTIAL INFORMATION**

**1. Public records.** Except as provided in subsections 2 and 3, information obtained by the department under this chapter is a public record as provided by Title 1, chapter 13, subchapter I.

In addition to remedies provided under Title 1, chapter 13, subchapter I, the Superior Court may assess against the department reasonable attorney fees and other litigation costs reasonably incurred by an aggrieved person who prevails in the appeal of the department's denial for a request for information under subchapter V.

[ 1989, c. 794, §3 (AMD) . ]

**2. Hazardous waste information and information on mercury-added products and electronic devices; chemicals.** Information relating to hazardous waste submitted to the department under this subchapter, information relating to mercury-added products submitted to the department under chapter 16-B, information relating to electronic devices submitted to the department under section 1610, subsection 6-A, information related to priority toxic chemicals submitted to the department under chapter 27 or information related to products that contain the "deca" mixture of polybrominated diphenyl ethers submitted to the department under section 1609 may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Conservation and Forestry and the Department of Health and Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and, for waste information, employees of the municipality in which the waste is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this

subsection is confidential and not a public record under Title 1, chapter 13. In the event a request for such information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this subsection.

[ 2015, c. 250, Pt. C, §10 (AMD) .]

**3. Release of information.** The commissioner shall not release the designated information prior to the expiration of the time allowed for the filing of an appeal or to the rendering of the decision on any appeal.

[ 1979, c. 699, §17 (NEW) .]

**4. License and enforcement information.** Information required by the department for the purpose of obtaining a permit, license, certification or other approval may not be designated or treated as designated information under subsection 2.

[ 1979, c. 699, §17 (NEW) .]

**5. Rules.** The board may adopt rules to carry out the purposes of this section. The rules shall be consistent with the provisions of Title 1, chapter 13, subchapter I.

[ 1981, c. 470, Pt. A, §173 (AMD) .]

#### **6. Prohibition; penalties.**

A. It is unlawful to disclose designated information to any person not authorized by this section.

[1979, c. 699, §17 (NEW).]

B. Any person who solicits, accepts or agrees to accept, or who promises, offers or gives any pecuniary benefit in return for the disclosure of designated information is guilty of a Class D crime and to the civil penalty of paragraph C. [1979, c. 699, §17 (NEW).]

C. Any person who knowingly discloses designated information, knowing that he is not authorized to do so, is subject to a civil penalty of not more than \$5,000. [1979, c. 699, §17 (NEW).]

D. In any action under this subsection, the court shall first declare that the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available.

[1979, c. 699, §17 (NEW).]

[ 1979, c. 699, §17 (NEW) .]

#### SECTION HISTORY

1979, c. 699, §17 (NEW). 1981, c. 470, §§A172,A173 (AMD). 1985, c. 267, §2 (AMD). 1987, c. 517, §24 (AMD). 1989, c. 794, §3 (AMD). 1989, c. 890, §§A40,B233 (AMD). 2001, c. 373, §1 (AMD). 2003, c. 661, §1 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 561, §7 (AMD). 2005, c. 590, §3 (AMD). 2007, c. 466, Pt. A, §72 (AMD). 2009, c. 397, §1 (AMD). 2009, c. 579, Pt. A, §1 (AMD). 2009, c. 610, §1 (AMD). 2011, c. 420, Pt. A, §35 (AMD). 2011, c. 657, Pt. W, §5 (REV). 2015, c. 250, Pt. C, §10 (AMD).

## Subchapter 1-A: SOLID WASTE

### Article 1: REMEDIATION AND CLOSURE

## §1310-C. PROGRAM ESTABLISHED

There is established within the Department of Environmental Protection a remediation and closure program for solid waste landfills. [1987, c. 517, §25 (NEW).]

**1. Objectives.** The program has the following objectives:

A. To accomplish the prompt closure of solid waste landfills which, through inappropriate siting, inadequate design and construction or improper operation, pose an actual or potential hazard to the environment and public health; [1991, c. 374, §3 (AMD).]

B. To accomplish remedial activities to eliminate the existing hazards posed by those landfills; and [1991, c. 374, §3 (AMD).]

C. To provide markets for compost and reclaimed materials. [1991, c. 374, §3 (NEW).]

[ 1991, c. 374, §3 (AMD) .]

**2. Open and closed or abandoned landfills.** The commissioner shall organize the program into 2 components to address the problems created by:

A. Open-municipal solid waste landfills; and [1987, c. 517, §25 (NEW).]

B. Abandoned or improperly or inadequately closed, municipal solid waste landfills. [1993, c. 732, Pt. C, §1 (AMD).]

[ 1993, c. 732, Pt. C, §1 (AMD) .]

**3. New facilities.** The department shall ensure that the siting, design, operating and closure requirements imposed on new solid waste disposal facilities pursuant to this chapter and chapter 3, subchapter 1, article 6, site location of development, are consistent with the provisions of this article.

[ 2015, c. 2, §28 (COR) .]

**4. Definitions.** As used in this article, unless the context indicates otherwise, the following terms have the following meanings.

A. "Abandoned" with reference to a solid waste landfill means no longer handling solid waste on or after February 1, 1976 when the cessation of handling operations and the covering of the landfill have not been approved by the department or otherwise accomplished in accordance with the procedures and standards established in this article. [1993, c. 732, Pt. C, §2 (AMD).]

B. "Closed" with reference to a solid waste landfill means no longer handling solid waste when the cessation of handling operations has occurred in accordance with the provisions of a closure plan approved by the department or the closure of the landfill has occurred in accordance with the procedures established by this article. [1993, c. 732, Pt. C, §2 (AMD).]

B-1. "Closure" means the completion of those activities specified in this article or in rules adopted pursuant to this article or a department closing order as appropriate, including, but not limited to, the placement of a cover or cap as a barrier over a landfill in order to minimize the infiltration of precipitation into the waste contained in the landfill. [1993, c. 732, Pt. C, §3 (NEW).]

C. "Open-municipal solid waste landfill" means a solid waste landfill owned by a municipality or group of municipalities, the Passamaquoddy Tribe, the Penobscot Nation or a quasi-municipal entity, such as a county or legislatively chartered village corporation, handling solid waste on or after February 1, 1976. [1991, c. 519, §1 (AMD).]

D. [1991, c. 519, §2 (RP).]

E. "Solid waste landfill" means a waste facility for the permanent disposal of solid waste on or in land. This term does not include land spreading sites used in programs approved by the department, but includes publicly owned sludge landfills. [1991, c. 519, §3 (AMD).]

F. "Contractor" means a business entity that engages in, or intends to engage in, landfill closure activities as a business service on property that it does not own. [1989, c. 870, §1 (NEW).]

G. "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, disposing, emptying or dumping of pollutants onto the land or into the water or ambient air. [1989, c. 870, §1 (AMD).]

H. "Contamination," with respect to subsection 6, means exceeding water quality standards, attributable to the solid waste facility, specified in:

- (1) Primary drinking water standards adopted under Title 22, section 2611;
- (2) Maximum exposure guidelines adopted under Title 22, section 2602-A; or
- (3) A statistically significant increase in concentration of measured parameters above an established baseline, whether or not the existing concentration already exceeds the maximum concentration levels specified in this section, using the 95% confidence interval when the student's t-test is applied. The use of other statistical tests and confidence intervals must be approved by the department. [1993, c. 732, Pt. C, §4 (AMD).]

I. "Pollutant" means dredged spoils, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind, or any constituent thereof. [1989, c. 870, §1 (NEW).]

J. "Remediation" means those actions, other than closure activities, taken at or near a solid waste landfill to prevent or minimize public health impacts or environmental impacts and to prevent or minimize the release of pollutants beyond the boundary of the property on which the landfill is located. The term "remediation" includes but is not limited to installation of landfill leachate collection and treatment systems; vapor extraction systems; ground water collection and treatment; or slurry walls. Other measures such as property purchases and water supply replacements may be defined as remediation only if they are determined to be cost-effective and as protective of public health and the environment as measures defined above as "remediation". [1993, c. 732, Pt. C, §5 (NEW).]

[ 1993, c. 732, Pt. C, §§2 - 5 (AMD) .]

**5. Coordination with uncontrolled sites program.** Nothing in this article may be construed to limit the authority of the department under any other provisions of law administered by the department. At any time prior to or following the evaluations conducted pursuant to section 1310-D, subsection 2, the commissioner may proceed under chapter 13-B to properly close any landfill or mitigate any threats posed by the landfill to public health, safety or the environment.

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §234 (AMD) .]

**6. Contractor liability.** Except as provided in subsection 7, a contractor that closes a municipal solid waste landfill in compliance with a closure plan approved by the department or in compliance with the procedures and standards established in section 1310-E-1 is not liable for the death of or injury to persons or for property damages resulting from contamination or a discharge of pollutants if:

A. The discharge is at or from the landfill site or the contamination resulted from a discharge at or from the landfill site; and [1989, c. 870, §2 (NEW).]

B. The contamination or discharge is related to on-site landfill closure activities. [1989, c. 870, §2 (NEW).]

[ 1993, c. 732, Pt. A, §6 (AMD) .]

**7. Exceptions.** Nothing in subsection 6 affects the liability of a contractor:

A. For its employees under former Title 39 or Title 39-A; or [1991, c. 885, Pt. E, §45 (AMD); 1991, c. 885, Pt. E, §47 (AFF).]

B. Under state and federal criminal laws. [1989, c. 870, §2 (NEW).]

[ 1991, c. 885, Pt. E, §45 (AMD); 1991, c. 885, Pt. E, §47 (AFF) .]

#### SECTION HISTORY

1987, c. 517, §25 (NEW). 1989, c. 870, §§1,2 (AMD). 1989, c. 890, §§A40,B234 (AMD). 1991, c. 374, §3 (AMD). 1991, c. 519, §§1-3 (AMD). 1991, c. 885, §E45 (AMD). 1991, c. 885, §E47 (AFF). 1993, c. 732, §§A6,C1-5 (AMD). RR 2015, c. 2, §28 (COR).

### §1310-D. CLOSURE OF OPEN-MUNICIPAL LANDFILLS

The provisions of this section govern open-municipal solid waste landfills. [2001, c. 212, §4 (AMD) .]

**1. Landfill ranking.** The department shall create and maintain a list of all open-municipal solid waste landfills ranked on the basis of the hazard each poses or potentially poses to the public health and environment. The list must establish no less than 2 categories of landfills: "high risk" landfills, which include those landfills that are known to pose a public health or environmental threat so immediate or substantial that corrective action must be taken without delay, and landfills that are not known to be "high risk." The department shall inform each affected municipality in writing whenever there are changes made to the priority list and publish the most current version of that list on or about February 1st of each year. All pertinent and related rules adopted by the department establishing standards governing landfill closure must be designed so that the costs of closure are coordinated with and reasonably proportionate to the relative public health risk and environmental risk indicated by the specific rank of the municipal landfill.

A. [1993, c. 732, Pt. C, §6 (RP).]

B. [1993, c. 732, Pt. C, §6 (RP).]

C. [1993, c. 732, Pt. C, §6 (RP).]

D. [1993, c. 732, Pt. C, §6 (RP).]

[ 2001, c. 315, §1 (AMD) .]

**2. Evaluation.** In response to the priorities established in the open-municipal solid waste landfill ranking and the objectives of paragraphs A to C, the commissioner shall conduct, subject to the availability of funding, environmental evaluations of each open-municipal solid waste landfill. The commissioner may employ private consultants to avoid additions to departmental staff and to accomplish the evaluations in a timely manner. The commissioner may utilize existing analyses of facilities, subject to the provisions of this subsection. Municipalities shall cooperate with the efforts of the department by providing reasonably available and relevant material that the department may require with regard to the purposes of this section. When the commissioner has sufficient knowledge of existing hazards to the environment and public health posed by a specific site, the commissioner may designate the landfill as a high-risk landfill and take measures necessary to effect proper closure of the landfill, notwithstanding the site's listed priority. In those cases, the commissioner shall ensure that the requirements of this subsection are met. The commissioner shall ensure that each evaluation achieves the following objectives:

- A. To identify the actual hazards, if any, to the environment and public health posed by the landfill and to determine the closure requirements of the landfill; [2001, c. 315, §1 (AMD).]
- B. When appropriate, to establish a monitoring system, which may include monitoring wells and test borings sufficient to ensure identification and monitoring of potential hazards; [1991, c. 519, §4 (AMD).]
- C. When potential hazards are identified, to provide:
- (1) A complete description of the movement of surface waters, ground waters and landfill gases on or near the landfill;
  - (2) An identification of pollutants in those waters;
  - (3) An evaluation of the scope, direction and rate of movement of the contamination plume, if any; and
  - (4) Any other information that the commissioner determines necessary to prepare the closure recommendations pursuant to this subchapter; [2001, c. 315, §1 (AMD).]
- D. To provide a recommended closure plan for the landfill. Closure recommendations must ensure a level or standard of control of pollutants in surface waters at least as stringent as the water quality criteria established under chapter 3, subchapter I, article 4-A. Those recommendations must also seek to achieve a level or standard of control of pollutants in ground water at least as stringent as the water quality criteria established under sections 465-C and 470, unless the commissioner finds that meeting those standards is technically and economically infeasible and that other measures can be implemented to ensure protection of public health and safety; and [2001, c. 315, §1 (AMD).]
- E. To consult with and involve the affected municipality or municipalities in the conduct of the evaluation and the analysis of its results. [1987, c. 517, §25 (NEW).]

[2001, c. 315, §1 (AMD).]

**3. Closing orders.** The commissioner may incorporate the recommendations of the landfill evaluations into a department closing order subject to the following provisions.

- A. The order must specify the use of compost or reclaimed soil materials for landfill cover to the maximum extent practical and consistent with sound environmental practices. Subject to sections 1310-F and 1310-G, a time schedule for implementation and all pertinent cost sharing must be included as part of the order. [2001, c. 315, §1 (AMD).]
- B. Any person who is aggrieved by the department order may appeal it as provided in section 341-D, subsection 4. [1991, c. 519, §5 (RPR).]

[2001, c. 315, §1 (AMD).]

**4. Implementation.** The municipality owning or operating the landfill is the party responsible for the implementation of the plan issued by the commissioner.

[1993, c. 732, Pt. C, §9 (AMD).]

**5. Certification of completion.** A municipality that engages a contractor to close a landfill under an order issued by the department shall hire a licensed engineer independent of the contractor or the municipality to, at a minimum, monitor, evaluate and report on all on-site landfill closure activities performed by the contractor. Upon completion of the closure work in compliance with the order issued by the department, that engineer shall provide the department and municipality with a written report that certifies that the work performed by the contractor conforms with the order issued by the department and all applicable laws and regulations. The cost to the municipality to engage the licensed engineer is a cost of closure under section 1310-F. Following receipt of the engineer's report, the department shall accept, conditionally accept or reject



the engineer's certification. If the department either conditionally accepts or rejects the certification, the department shall identify and direct the municipality to undertake any measures necessary for completion of the closure in compliance with the order.

[ 1993, c. 732, Pt. C, §10 (AMD) .]

#### SECTION HISTORY

1987, c. 517, §25 (NEW). 1989, c. 870, §3 (AMD). 1989, c. 890, §§A40,B235, 236 (AMD). 1991, c. 374, §4 (AMD). 1991, c. 519, §§4-6 (AMD). 1991, c. 759, §§1,2 (AMD). 1993, c. 732, §§C6-10 (AMD). 2001, c. 212, §4 (AMD). 2001, c. 315, §1 (AMD).

### **§1310-E. CLOSURE AND REMEDIATION OF CLOSED OR ABANDONED SOLID WASTE LANDFILLS**

*(REPEALED)*

#### SECTION HISTORY

1987, c. 517, §25 (NEW). 1989, c. 890, §§A40,B237 (AMD). 1991, c. 519, §7 (AMD). 1993, c. 732, §C11 (RP). 2001, c. 626, §18 (AMD).

### **§1310-E-1. CLOSURE OF LANDFILLS**

Notwithstanding closure schedules previously established by rule, unlicensed and licensed open-municipal solid waste landfills that have not been closed must be closed in accordance with the schedule established by federal law or rule; state law or rule; schedules of compliance; consent agreements; enforcement orders; or license conditions. Those landfills must be closed in accordance with one of the following procedures. [1993, c. 732, Pt. C, §12 (NEW).]

**1. Regulation procedure.** This procedure involves the submission of a closure plan and the implementation of the closure plan as approved by the department in accordance with landfill closure standards included in rules adopted pursuant to section 1304. This closure process is required of all licensed municipal solid waste landfills and may be otherwise initiated in one of 3 ways:

A. At the discretion of the municipality; [1993, c. 732, Pt. C, §12 (NEW).]

B. In response to an order issued by the department to close a landfill pursuant to section 1310-D, subsection 2 when the state cost share for the closure is immediately available. For the purposes of this section, "immediately available" means that the municipality is reimbursed the total eligible amount of the state cost share for the anticipated closure operation as ordered within 180 days of the municipality incurring the expense; or [1993, c. 732, Pt. C, §12 (NEW).]

C. In response to an order issued by the department to close a landfill pursuant to section 1310-D, subsection 2 in conjunction with a finding by the commissioner that the landfill poses a "high risk." [1993, c. 732, Pt. C, §12 (NEW).]

[ 1993, c. 732, Pt. C, §12 (NEW) .]

**2. Reduced closure procedure.** To achieve compliance with this section, a municipality has the option to close its landfill, in accordance with a reduced procedure as established by this subsection, except when:

A. The landfill is a licensed municipal solid waste landfill or the municipality has been ordered to close or remediate a landfill pursuant to section 1310-D, subsection 2 in which case the landfill must be closed in accordance with subsection 1; [1999, c. 556, §37 (AMD).]

B. The landfill meets one of the following criteria, in which case the landfill must close in accordance with subsection 3:

- (1) A drinking water supply well is located within 1,000 feet of the solid waste boundary of the landfill;
- (2) The public water supply well is located within 10,000 feet of the solid waste boundary of the landfill and in the same aquifer, for landfills located on a sand and gravel aquifer as mapped by the Natural Resources Information and Mapping Center;
- (3) An enclosed building is located within 100 feet of the solid waste boundary of the landfill; or
- (4) The landfill has received hazardous industrial wastes. [1999, c. 556, §38 (AMD).]

Those municipalities that are able to establish that their open-municipal landfill is not excluded from the closure option provided by this subsection may proceed with the option for a reduced closure procedure. This closure option is met if the closure complies with the landfill closure standards of 40 Code of Federal Regulations, Part 258, Section 258.60 (a). The municipal officers shall submit to the department a certification of completion of closure operations in accordance with the standards of this subsection no later than 60 days from the date of that completion.

[ 1999, c. 556, §§37, 38 (AMD) .]

**3. Alternative closure procedure.** A municipality that determines that it owns or operates a landfill that by the terms of subsection 2, paragraph B is not automatically eligible for the reduced closure option must notify the department in writing of that circumstance within 60 days of making the determination and the notification must be considered by the department as a request for permission to close the landfill in accordance with the closure standards established by subsection 2. Upon receipt of the notification and after further evaluating the circumstances of the landfill as may be necessary, the department must notify the municipality in writing that permission is granted to close the landfill in accordance with the standards established in subsection 2, or that permission is granted to close the landfill in accordance with the standards of subsection 2 and any reasonable additional closure or remediation standards that the department may require that are related to the identified characteristics that cause the landfill to not be automatically eligible for the reduced closure option.

[ 1993, c. 732, Pt. C, §12 (NEW) .]

**4. Subsequent landfill closure activity.** Any municipality that closes a landfill pursuant to subsection 1, 2 or 3 and that inspects, monitors and maintains the closure measures as required under subsection 6 is entitled to an assurance from the department that the municipality has met its closure obligations and that no further closure action other than inspection, monitoring and maintenance is required of the municipality by the department with regard to that landfill unless one or more of the following circumstances arises:

A. The commissioner finds that the landfill, although closed, is nonetheless a high-risk landfill and orders further closure or remediation activities; [1993, c. 732, Pt. C, §12 (NEW).]

B. Additional closure or remediation activities are needed and the department's cost share of the additionally required activity is immediately available; or [1993, c. 732, Pt. C, §12 (NEW) .]

C. Additional closure or remediation activities are required as a result of an existing or pending formal department enforcement action with respect to the violation of the license conditions under which a landfill was operated. [1993, c. 732, Pt. C, §12 (NEW).]

Nothing with regard to this assurance may be construed to limit the department's authority to act using its own resources as that activity may be otherwise authorized by law.

[ 2007, c. 655, §7 (AMD) .]

**5. Existing closure procedures.** The closure procedures established in this section do not override or impair closure procedures established prior to the effective date of this section pursuant to a legally binding consent agreement, license condition, enforcement order or other form of contract between a municipality and that department that was executed prior to the effective date of this section.

[ 1993, c. 732, Pt. C, §12 (NEW) .]

**6. Post-closure maintenance.** A municipality that closes a landfill pursuant to subsection 1, 2 or 3 shall inspect, monitor and maintain the closure measures required under those subsections as necessary to ensure that the closure remains effective.

[ 2007, c. 655, §8 (NEW) .]

#### SECTION HISTORY

1993, c. 732, §C12 (NEW). 1995, c. 502, §E32 (AMD). 1999, c. 556, §§37,38 (AMD). 2007, c. 655, §§7, 8 (AMD).

## §1310-E-2. INVESTIGATION AND REMEDIATION OF LANDFILLS

**1. Investigation.** The commissioner may investigate a solid waste landfill, including an abandoned landfill, when there is a reasonable basis to believe that an unauthorized discharge has occurred or may be occurring. The commissioner shall consult with and involve the affected municipality or municipalities in the conduct of the investigation and evaluation of the results of the investigation.

[ 2001, c. 315, §2 (NEW) .]

**2. Remediation recommendations.** When, after investigation, the commissioner has sufficient knowledge that a solid waste landfill poses a hazard to public health or the environment, the commissioner may undertake additional evaluations to develop a recommended plan for remediation of the hazard. Remediation recommendations must ensure a level or standard of control of pollutants in surface waters at least as stringent as the water quality criteria established under chapter 3, subchapter I, article 4-A. Those recommendations must also seek to achieve a level or standard of control of pollutants in groundwater at least as stringent as the water quality criteria established under sections 465-C and 470, unless the commissioner finds that meeting those standards is technically and economically infeasible and that other measures may be implemented to ensure protection of public health and safety.

[ 2001, c. 315, §2 (NEW) .]

**3. Remediation orders.** The commissioner may take measures necessary to effect a recommended plan for remediation or may incorporate the plan recommendations into a remediation order. The order must include the time schedule for implementation as required under section 1310-G. The person or municipality owning or operating the landfill is the party responsible for the implementation of the order. Any person aggrieved by the order may appeal the order as provided in section 341-D, subsection 4.

[ 2001, c. 315, §2 (NEW) .]

#### SECTION HISTORY

2001, c. 315, §2 (NEW).

## §1310-F. COST SHARING

The commissioner shall administer a closure and remediation cost-sharing program to assist municipalities and other public entities as provided in subsection 3 in the planning and implementation of the closure and remediation orders. The program is subject to the following provisions. [1991, c. 519, §8 (AMD) .]

### 1. Cost-share fraction.

[ 1993, c. 732, Pt. C, §13 (RP) .]

**1-A. Remediation cost-share fraction.** Except as provided under subsection 2 and subject to the availability of funds, the commissioner shall issue grants or payments to eligible municipalities for 90% of the planning and implementation costs of remediation.

[ 2007, c. 655, §9 (AMD) .]

**1-B. Closure cost-share fraction.** Subject to the availability of funds, the commissioner shall issue grants or payments for the following percentages of landfill closure costs incurred by municipalities.

A. The state cost share is 75% of closure costs incurred before July 1, 1994. [1997, c. 479, §1 (RPR) .]

B. The state cost share is 50% of landfill cover costs and 75% of other closure costs incurred on or after July 1, 1994 and before January 1, 1996. [1997, c. 479, §1 (RPR) .]

C. The state cost share is 30% of landfill cover costs and 75% of other closure costs incurred on or after January 1, 1996 and before January 1, 2000. [1997, c. 479, §1 (RPR) .]

D. Notwithstanding paragraphs B and C, the state cost share is 75% of closure costs, including landfill cover costs, incurred on or after July 1, 1994 and before January 1, 2000, if:

(1) The costs are incurred pursuant to a written agreement between the municipality and the department executed before July 1, 1994; or

(2) The commissioner determines that the closure work was delayed for reasons beyond the control of the municipality and the costs are identified in and incurred pursuant to a written agreement between the municipality and the department. [1997, c. 479, §1 (NEW) .]

E. Notwithstanding paragraphs B, C and D, the state cost share is 75% of closure costs, including landfill cover costs, incurred on or after July 1, 1994 and before December 31, 2025, if:

(1) The commissioner originally issued a license on or before September 1, 1989 for operation of the landfill and found that the landfill met the design requirements and environmental protection standards at the time of licensing; and

(2) The commissioner has since determined that the landfill or portion of the landfill must be closed based on the finding that the landfill is contaminating groundwater and that corrective actions have not been successful. [2015, c. 302, §1 (AMD) .]

The state cost share is 0% of landfill closure costs incurred on or after January 1, 2000, except that the commissioner may issue grants or payments as provided in paragraph E or for 30% of those costs if incurred pursuant to an alternative closure commitment executed before January 1, 2000, and if specifically identified in a department order or license, schedule of compliance or consent agreement.

As used in this subsection, "landfill cover costs" means the cost of materials and the cost of placement of materials associated with the physical construction of that portion of a cover over a landfill that meets the minimum landfill cover permeability of  $1 \times 10^{-5}$  cm./sec. and the thickness standards of 40 Code of Federal Regulations, Part 258, Section 258.60(a).

[ 2015, c. 302, §1 (AMD) .]

**2. Eligibility.** A municipality that owns, rents or leases a solid waste landfill for which obligations are required or permitted by this chapter or rules adopted under this chapter is eligible for cost-sharing grants or reimbursement payments. In order to receive reimbursement pursuant to this section, the municipality shall, at a minimum, provide reasonable proof of municipal expenditures as the department may require, as well as certification signed by the municipal officers that, to the best of their knowledge and the knowledge of all the pertinent municipal officials, closure activities were performed in accordance with the applicable standards established by section 1310-E-1 and remediation activities were performed in accordance with a plan approved or issued by the department. A municipality that has spent funds to close its solid waste landfill or to remedy environmental and public health hazards posed by the landfill prior to the adoption of a closure or remediation plan under this subchapter or that closed a landfill or remediated environmental or public health hazards posed by a landfill is also eligible for reimbursement of closure or remediation costs incurred after February 1, 1976, as long as the closure or remediation actions were in conformance with all applicable laws or rules in effect at the time. Costs incurred by closure or remediation actions taken after the adoption of a closure or remediation plan under this subchapter are eligible for reimbursement only if those actions conform to that plan. Grant or reimbursement payments may not be made to a municipality for a portion of payments to settle civil or criminal judgments against that municipality for damages or injuries caused by the landfill. In addition, for landfills in operation prior to January 1, 1993, grant payments may not be made to a municipality for remediation to mitigate a threat posed by that landfill to structures built after January 1, 1994 by that municipality, the county in which that municipality is located, a school administrative unit as defined in Title 20-A, section 1, a quasi-municipal corporation as defined in Title 30-A, section 2351 or a special district as defined in Title 30-A, section 5704 that includes any portion of the municipality unless the commissioner determines that the municipality could not have reasonably anticipated the threat. Any interest paid by a municipality prior to reimbursement on a municipal bond or commercial bank note issued to raise funds for remediation and closure activities is a cost eligible for reimbursement under this section. Unless otherwise directed by the terms of a bond issue approved by the voters, the commissioner shall use at least 1/3 of the funds approved by the voters for municipalities eligible for reimbursement of closure and remediation costs eligible under this subsection until all those municipalities have been reimbursed. The remainder of the available funds must be allocated in an equitable manner so that, at a minimum, an adequate cap is constructed over all identified high-risk landfills subject to closure. The department shall issue, upon the request of a municipality, a notice in writing that projects to a date certain the availability of cost-sharing funds for which the municipality is eligible. The inability or failure of the department to issue a written projection to a date certain means that the cost-sharing funds are not available for the foreseeable future. A landfill that is privately owned and operated is not eligible for reimbursement under this subchapter.

A. The commissioner may act to abate public health, safety and environmental threats at municipal solid waste landfills identified as uncontrolled hazardous substance sites under section 1362, subsection 3 or at federally declared Superfund sites. Notwithstanding subsections 1-A and 1-B, the commissioner shall determine the amount of grants or payments issued to municipalities for the costs of remediation and closure at those sites. [1997, c. 479, §2 (AMD).]

B. The commissioner may enter into contracts with the Maine Municipal Bond Bank to manage bonds issued under this article, as long as the management fee structure does not allow dilution of the bond principal. [1995, c. 462, Pt. A, §77 (RPR).]

C. In a circumstance where the department finds that further closure or remediation activities are required for a landfill because the landfill was not closed in accordance with the standards of closure that the municipal officers certified to the department pursuant to this subsection and further finds that the certification was a negligent misrepresentation of a material fact results in the ineligibility of the municipality for cost sharing for the additional activities that may be required as a result of the nonperformance of the previously certified activities. [1995, c. 462, Pt. A, §77 (RPR).]

D. A municipality that is eligible or authorized by the department to use the closing procedure established in section 1310-E-1, subsection 1, 2 or 3 is not eligible for reimbursement of costs associated with closing activities that are more stringent than the minimum required by that section unless those additional activities are approved in writing by the department. [1995, c. 462, Pt. A, §77 (RPR).]

E. If the municipality has taken reasonable steps to anticipate and abate threats posed by a municipal landfill, a municipality is eligible to receive a maximum reimbursement of 50% of the remediation costs related to any threat posed by the municipal landfill to wells or other structures constructed after December 31, 1999. [1999, c. 334, §11 (NEW).]

[ 2001, c. 315, §3 (AMD) .]

**3. Sanitary and refuse disposal districts.** Any of the following public entities owning or operating a solid waste landfill is eligible for reimbursement of closure or remediation costs incurred after February 1, 1976, if the closure or remediation actions were in conformance with all applicable laws or rules in effect at the time:

A. A sanitary district created under chapter 11 or by special act of the Legislature; or [1991, c. 66, Pt. A, §36 (RPR).]

B. A regional association as defined in section 1303-C, subsection 24. [1991, c. 66, Pt. A, §36 (RPR).]

[ 1991, c. 519, §11 (AMD) .]

**4. Insurance.** Notwithstanding subsection 1-B, the commissioner may not issue a grant or reimbursement payment under this section to a municipality for the costs of closure unless the municipality demonstrates to the commissioner that each person who performs work to implement the closure plan is self-insured or is covered by a workers' compensation insurance policy in accordance with Title 39-A.

[ 1993, c. 732, Pt. C, §16 (AMD) .]

**5. Audit.** A municipality or other public entity receiving grants or reimbursement payments shall include the remediation or closure project in its annual independent audit to provide assurance of the proper expenditure of state funds. A copy of this audit must be provided in a timely manner to the solid waste closure and remediation program of the Department of Environmental Protection.

[ 1993, c. 732, Pt. C, §17 (AMD) .]

**6. Contract enforcement.** At the request of a recipient of state funds under this section, the commissioner may provide technical assistance and, through the Attorney General, legal assistance in the administration or enforcement of any contract entered into by or for the benefit of the recipient in connection with a landfill closure and remediation project assisted by these funds. When state funds have been disbursed pursuant to this section, the State, acting through the Attorney General, has a direct right of action against the recipient of the funds, or a contractor, subcontractor, architect, engineer or manufacturer of equipment purchased with the funds, to recover the funds which may be properly awarded as actual damages in an action alleging negligence or breach of contract.

[ 1995, c. 642, §8 (NEW) .]

#### SECTION HISTORY

1987, c. 517, §25 (NEW). 1989, c. 273, (AMD). 1989, c. 869, §§A6,7 (AMD). 1989, c. 870, §4 (AMD). 1989, c. 890, §§A40,B238 (AMD). 1991, c. 66, §§A35-37 (AMD). 1991, c. 215, (AMD). 1991, c. 519, §§8-12 (AMD). 1991, c. 885, §E46 (AMD). 1991, c. 885, §E47 (AFF). 1993, c. 355, §49 (AMD). 1993, c. 621, §6 (AMD). 1993, c. 732, §§C13-17 (AMD). 1995, c. 462, §A77 (AMD). 1995, c. 642, §8 (AMD). 1995, c. 665, §HH1 (AMD). 1997, c. 479, §§1,2 (AMD). 1999, c. 334, §11 (AMD). 2001, c. 315, §3 (AMD). 2007, c. 655, §9 (AMD). 2011, c. 435, §1 (AMD). 2015, c. 302, §1 (AMD).

## §1310-G. TIME SCHEDULES FOR CLOSURE OF EXISTING FACILITIES

The department shall establish, as part of a municipal landfill closure and remediation plan, reasonable time schedules for the implementation of the plan. [1993, c. 732, Pt. C, §18 (AMD).]

**1. Criteria.** In establishing the time schedule, the department shall consider the following criteria:

A. The level of environmental and public health hazard posed by the landfill in its current state; [1987, c. 517, §25 (NEW).]

B. The availability of reasonable, alternative disposal options available to the municipality following closure of the existing landfill; [1993, c. 732, Pt. C, §18 (AMD).]

C. The period reasonably needed by the municipality to raise its share of plan costs; and [1993, c. 732, Pt. C, §18 (AMD).]

D. The availability of state cost-share funds for the project. [1993, c. 732, Pt. C, §18 (NEW).]

[ 1993, c. 732, Pt. C, §18 (AMD) .]

**2. Violation of schedule.**

[ 1993, c. 355, §50 (RP) .]

### SECTION HISTORY

1987, c. 517, §25 (NEW). 1989, c. 890, §§A40,B239 (AMD). 1993, c. 355, §50 (AMD). 1993, c. 732, §C18 (AMD).

## §1310-H. SUPERVISION AND ENFORCEMENT OF SCHEDULES

The commissioner shall monitor implementation of closure and remediation plans. In addition to any other remedy available by law, if the commissioner determines, after opportunity for public hearing, that any party responsible for the implementation of a plan has failed substantially to meet the established time schedule or has failed to execute the provisions of the plan, the commissioner may: [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §240 (AMD).]

**1. Departmental implementation.** Authorize the department or its agents to enter onto the site and complete the remaining provisions of the plan; and

[ 1987, c. 517, §25 (NEW) .]

**2. Cost recovery.** Initiate proceedings to recover any costs incurred by the department in implementing a plan from the party or parties responsible for implementation of the plan and, in the case of a municipal landfill, to recover from the municipality the full amount of any grants and loans made to it under this article in connection with closure and remediation of the landfill.

[ 1987, c. 517, §25 (NEW) .]

### SECTION HISTORY

1987, c. 517, §25 (NEW). 1989, c. 890, §§A40,B240 (AMD).

**§1310-H-1. NOTICE TO SUBSEQUENT OWNERS**

The owner of a parcel of land upon which a closed or abandoned municipal solid waste landfill is located shall include notice of the presence of the landfill in any deed transferring ownership of all or part of the parcel and in any easement conveying a right of use to all or part of the parcel. [1999, c. 334, §12 (NEW).]

## SECTION HISTORY

1999, c. 334, §12 (NEW).

**§1310-I. REPORT TO THE LEGISLATURE**

*(REPEALED)*

## SECTION HISTORY

1987, c. 517, §25 (NEW). 1989, c. 890, §§A40,B241 (AMD). 1993, c. 355, §51 (RP).

**Article 2: RECYCLING AND SOURCE REDUCTION****§1310-J. PROGRAM ESTABLISHED; GOALS**

*(REPEALED)*

## SECTION HISTORY

1987, c. 517, §25 (NEW). 1989, c. 585, §E20 (RP).

**§1310-K. STATE RECYCLING PLAN**

*(REPEALED)*

## SECTION HISTORY

1987, c. 517, §25 (NEW). 1987, c. 752, §§1,2 (AMD). 1989, c. 585, §E21 (RP).

**§1310-L. RECYCLING ADVISORY COUNCIL**

*(REPEALED)*

## SECTION HISTORY

1987, c. 517, §25 (NEW). 1987, c. 769, §A182 (AMD). 1989, c. 503, §B179 (AMD). 1989, c. 585, §E22 (RP). 1993, c. 226, §A2 (RP).

**§1310-M. REPORT TO THE LEGISLATURE**

*(REPEALED)*

## SECTION HISTORY

1987, c. 517, §25 (NEW). 1989, c. 585, §E23 (RP).

**Article 3: SOLID WASTE FACILITY SITING**



## §1310-N. SOLID WASTE FACILITY LICENSES

No person may locate, establish, construct, expand the disposal capacity of or operate any solid waste facility unless approved by the department under the provisions of this chapter. When the proposed facility is located within the jurisdiction of the Maine Land Use Planning Commission, in addition to any other requirement, the department shall require compliance with existing standards of the commission. [1993, c. 680, Pt. A, §37 (RPR); 2011, c. 682, §38 (REV).]

**1. Licenses.** The department shall issue a license for a waste facility whenever it finds that:

A. The facility will not pollute any water of the State, contaminate the ambient air, constitute a hazard to health or welfare or create a nuisance; [1993, c. 680, Pt. A, §37 (RPR).]

B. In the case of a disposal facility, the facility provides a substantial public benefit, determined in accordance with subsection 3-A; [2013, c. 458, §1 (AMD).]

C. In the case of a disposal facility or a solid waste processing facility that generates residue requiring disposal, the volume of the waste and the risks related to its handling and disposal have been reduced to the maximum practical extent by recycling and source reduction prior to disposal. This paragraph does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling or to any other facility exempt from the requirements of subsection 5-A. The department shall find that the provisions of this paragraph are satisfied when the applicant demonstrates that the applicable requirements of subsection 5-A have been satisfied; and [2013, c. 458, §1 (AMD).]

D. The practices of the facility are consistent with the State's solid waste management hierarchy set forth in section 2101. The department shall adopt rules incorporating the State's solid waste management hierarchy as a review criterion for licensing approval under this subsection. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2013, c. 458, §1 (NEW).]

[ 2013, c. 458, §1 (AMD) .]

**1-A. Surface water protection.** The department may not issue a license for a solid waste facility if it finds that the proposed facility will cause an unreasonable threat to the quality of a classified body of surface water. In determining whether the proposed facility poses an unreasonable threat, the department shall require the applicant to provide evidence demonstrating that:

A. The soils on the proposed facility site are suitable to the nature of the undertaking; [1995, c. 126, §1 (NEW).]

B. An appropriate erosion and sedimentation control plan has been developed and will be implemented on the site; and [1995, c. 126, §1 (NEW).]

C. The proximity of any classified surface water bodies to the proposed solid waste facility has been considered during the site selection process and during the development of the erosion and sedimentation control plan. [1995, c. 126, §1 (NEW).]

[ 1995, c. 126, §1 (NEW) .]

**2. Finding of environmental suitability.**

[ 1989, c. 585, Pt. E, §25 (RP) .]

**2-A. Aquifer protection.** The department may not issue a license for a solid waste disposal facility when it finds that the proposed facility overlies a significant sand and gravel aquifer or when the department finds that the proposed facility poses an unreasonable threat to the quality of a significant sand and gravel aquifer it does not overlie, or to an underlying fractured bedrock aquifer.

A. "Significant sand and gravel aquifer" is defined as a porous formation of ice-contact and glacial outwash sand and gravel that contains significant recoverable quantities of water likely to provide drinking water supplies. [1993, c. 680, Pt. A, §37 (RPR).]

B. "Fractured bedrock aquifer" is defined as a consolidated rock formation that is fractured and that is saturated and recharged by precipitation percolating through overlying sediments to a degree that will permit wells drilled into the rock to produce a sufficient water supply for domestic use. [1993, c. 680, Pt. A, §37 (RPR).]

C. In determining whether or not the proposed facility poses an unreasonable threat to the quality of a significant sand and gravel aquifer or to an underlying fractured bedrock aquifer, the department shall require the applicant to provide:

(1) A thorough hydrogeological assessment of the proposed site and the contiguous area including any classified surface waters, significant sand and gravel aquifers and fractured bedrock aquifers that could be affected by the proposed facility during normal operation or in the event of unforeseen circumstances including the failure of any engineered barriers to ground water flow. The assessment must include a description of ground water flow rates, the direction of ground water flow in both the horizontal and vertical directions, and the degree of dilution or attenuation of any contaminants that may be released from the proposed site and flow toward any classified surface water, significant sand and gravel aquifer or fractured bedrock aquifer. [1993, c. 680, Pt. A, §37 (RPR).]

[ 1993, c. 680, Pt. A, §37 (RPR) .]

## **2-B. Traffic movement.**

[ 1993, c. 383, §36 (RP) .]

## **2-C. Proximity to residential areas.**

[ 1991, c. 43, §4 (AFF); 1991, c. 43, §1 (RP) .]

**2-D. Setback requirements for transfer stations.** The department may not issue a permit or a license for a municipal solid waste transfer station unless the location of the handling site conforms to the following setback requirements.

A. For a transfer station on an island that is not connected to the mainland by a road, the department shall establish setback distances on a case-specific basis in accordance with this paragraph:

(1) No predetermined minimum setback from a property boundary, residence or public road established in statute or rule applies. A proposed setback from such a location must be reasonable and compatible with the abutting land use. If all abutting landowners give written approval to the location of the handling site, the department shall find that the proposed setback to a property boundary, residence or public road is reasonable and compatible with abutting land use. If all abutting landowners do not give written approval, the department shall make an independent determination of the reasonableness and the compatibility of the setback to a property boundary, residence or public road.

(2) No predetermined minimum setback from an active or closed landfill established in statute or rule applies. The proposed setback from an active or closed landfill must be reasonable and compatible with the abutting land use. The department shall make an independent determination of the reasonableness and compatibility of the proposed setback to an active or closed landfill.

(3) To the fullest extent possible, the department shall ensure that the handling site of a transfer station on an island is located in a manner that minimizes any adverse impact on the island residents. [1995, c. 73, §1 (RPR).]

B. For all other transfer stations, the handling site may not be within 250 feet of any abutting property boundary, unless:

- (1) The department finds the use of the abutting property to be compatible with the operation of a transfer station on the proposed location. If the department finds use of the abutting property to be compatible, the handling site may be within 250 feet of the boundary but not within 250 feet of any permanent structure on that abutting property; or
- (2) The municipality obtains the written permission of all property owners within 250 feet of the proposed handling site. [1995, c. 73, §2 (AMD).]

This subsection does not apply to transfer station permit or license renewals.

[ 1995, c. 73, §§1, 2 (AMD) .]

**2-E. Automobile dismantling, recycling and salvage operations.** The department may not issue a license for a solid waste facility that is larger than 3 acres in size and that is the location of automobile dismantling, recycling and salvage if the automobile dismantling, recycling and salvage operations take place within 100 feet of a well that serves as a public or private water supply. This prohibition does not include a private well that serves only the facility or the owner's or operator's abutting residence.

[ 1993, c. 680, Pt. A, §37 (RPR) .]

**2-F. Siting standards.** The department shall issue a license for a new or expanded solid waste facility when it finds that the following standards, in addition to any other requirements of this chapter, have been met.

A. The applicant has the financial and technical ability to develop the project in a manner consistent with state environmental standards and with the provisions of this chapter. [1993, c. 680, Pt. A, §37 (RPR) .]

B. The applicant has made adequate provision for traffic movement of all types into, out of and within the proposed solid waste facility. The department shall consider traffic movement both on site and off site. In making its determination, the department shall consider the following factors:

- (1) Vehicular weight limits;
- (2) Road construction and maintenance standards;
- (3) Vehicle type;
- (4) Public safety and congestion on any public or private road traveled by vehicles transporting waste to or from the proposed facility; and
- (5) Other relevant factors. [1993, c. 680, Pt. A, §37 (RPR).]

C. The applicant has made adequate provision for fitting the proposed solid waste facility harmoniously into the existing natural environment and the proposed solid waste facility will not unreasonably adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities. [1993, c. 680, Pt. A, §37 (RPR).]

D. The proposed solid waste facility will be built on soil types that are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment. [1993, c. 680, Pt. A, §37 (RPR) .]

E. The proposed solid waste facility will not pose an unreasonable risk that a discharge to a significant ground water aquifer will occur. [1993, c. 680, Pt. A, §37 (RPR).]

F. The applicant has made adequate provision for utilities including water supplies, sewerage facilities, solid waste disposal and roadways required for the project, and the proposed solid waste facility will not have an unreasonable adverse effect on the existing or proposed utilities and roadways in the municipality or area served by those services. [1993, c. 680, Pt. A, §37 (RPR).]

G. The project will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to a structure. [1993, c. 680, Pt. A, §37 (RPR) .]

[ 1993, c. 680, Pt. A, §37 (RPR) .]

**2-G. Setback requirement for land application and off-site storage of sludge.** The department may not issue a license for a sludge land application site that is within 75 feet of a river, perennial stream or great pond. The department may not issue a license for a sludge storage site or storage facility off the site of generation that is within 250 feet of a river, perennial stream or great pond. Upon the written request to the department of a person who owns property that abuts a sludge land application site or storage facility, the department shall restrict the sludge application or sludge storage site to no less than 50 feet from that abutting property boundary. The board may establish other setbacks by rule.

[ 1999, c. 393, §5 (NEW) .]

### **3. Public benefit determination.**

[ 1995, c. 465, Pt. A, §14 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

**3-A. Public benefit determination.** Public benefit determination is made in the following manner.

A. For the following facilities, the department determines public benefit and shall employ a rebuttable presumption of public benefit:

(1) Solid waste disposal facilities less than 6 acres in size that accept only inert fill, construction and demolition debris, debris from land clearing and wood wastes; and

(2) Solid waste disposal facilities used exclusively for the disposal of waste generated by the owner of the facility except that the facility may accept, on a nonprofit basis, waste not generated by the owner provided that the amount so accepted does not exceed 15% of all solid waste accepted on an annual average. [1995, c. 465, Pt. A, §15 (NEW); 1995, c. 465, Pt. C, §2 (AFF) .]

B. For all other facilities, the commissioner shall make the determination of public benefit in accordance with section 1310-AA, and the commissioner's determination under that section is not subject to review by the department or the board as part of the licensing process under this section. [1995, c. 465, Pt. A, §15 (NEW); 1995, c. 465, Pt. C, §2 (AFF) .]

[ 1995, c. 465, Pt. A, §15 (NEW); 1995, c. 465, Pt. C, §2 (AFF) .]

### **4. Presumption of public benefit.**

[ 1989, c. 585, Pt. E, §27 (RP) .]

### **5. Recycling and source reduction determination.**

[ 2007, c. 583, §3 (RP) .]

**5-A. Recycling and source reduction determination.** The requirements of this subsection apply to solid waste disposal facilities and to solid waste processing facilities that generate residue requiring disposal.

A. An applicant for a new or expanded solid waste disposal facility shall demonstrate that:

(1) The proposed solid waste disposal facility will accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by this chapter and other provisions of state law. The department shall attach this requirement as a standard condition to the license of a solid waste disposal facility governing the future acceptance of solid waste at the proposed facility; and

(2) The applicant has shown consistency with the recycling provisions of the state plan.

This paragraph does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling. [ 2007, c. 583, §4 (NEW) . ]

B. The provisions of this paragraph apply to solid waste processing facilities that generate residue requiring disposal.

(1) An applicant for a new or expanded solid waste processing facility that generates residue requiring disposal shall demonstrate that all requirements of this paragraph will be satisfied. On an annual basis, an owner or operator of a licensed solid waste processing facility that generates residue requiring disposal shall demonstrate compliance with all the requirements of this paragraph. The annual demonstration of compliance must be included as an element of the facility's annual report to the department submitted in conformance with the provisions of subsection 6-D, paragraph B and department rules.

(2) A solid waste processing facility that generates residue requiring disposal shall recycle or process into fuel for combustion all waste accepted at the facility to the maximum extent practicable, but in no case at a rate less than 50%. For purposes of this subsection, "recycle" includes, but is not limited to, reuse of waste as shaping, grading or alternative daily cover materials at landfills; aggregate material in construction; and boiler fuel substitutes.

(3) A solid waste processing facility subject to this paragraph shall demonstrate consistency with the recycling provisions of the state plan.

(4) The requirements of this paragraph do not apply to solid waste composting facilities; solid waste processing facilities whose primary purpose is volume reduction or other waste processing or treatment prior to disposal of the waste in a landfill or incineration facility; solid waste processing facilities that are licensed in accordance with permit-by-rule provisions of the department's rules; or solid waste processing facilities that are exempt from the requirements of the solid waste management rules related to processing facilities adopted by the board.

(5) If the department amends the rules relating to fuel quality for construction and demolition wood fuel and the amendment adversely affects the ability of a solid waste processing facility to meet the 50% standard in subparagraph (2), the department may not enforce the requirements of subparagraph (2) against that processing facility and the department shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report relating to the rule change. The joint standing committee of the Legislature having jurisdiction over natural resources matters may submit legislation related to the report.

The department shall adopt rules to implement the provisions of this paragraph. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [ 2009, c. 412, Pt. A, §1 (AMD) . ]

[ 2009, c. 412, Pt. A, §1 (AMD) . ]

**6. Terms and compliance schedules.** Except as provided in subsection 6-D, licenses are issued under terms and conditions the department prescribes, and for a term not to exceed 5 years. The department may establish reasonable time schedules for compliance with this article and rules adopted by the board. A licensed or unlicensed municipal solid waste landfill operating on December 31, 1991 may continue to

operate until December 31, 1992 unless the commissioner finds that continued operation of a landfill poses an immediate hazard to the public health or the environment, including, without limitation, a threat to a public or private water supply.

[ 1993, c. 680, Pt. A, §37 (RPR) .]

**6-A. Relicensing.** Notwithstanding subsection 6, a transfer station or a recycling facility licensed under this chapter is not subject to relicensing unless the standards in effect at the time the previous license was issued are changed or the facility significantly changes its operation. For the purposes of this subsection, a transfer station includes any associated area or use that is permitted by the license, such as areas used to burn or chip wood or brush and areas used to store or handle white goods or tires, but does not include any associated wood waste or demolition debris landfills.

[ 1993, c. 680, Pt. A, §37 (RPR) .]

**6-B. Unlicensed landfills operating after December 31, 1992.** Notwithstanding subsection 6, the commissioner shall enter into an agreement with a municipality allowing that municipality to operate an unlicensed municipal solid waste landfill after December 31, 1992 if the commissioner determines that the municipality has:

A. Selected an alternative solid waste handling or disposal option that is licensed or capable of being licensed; [1993, c. 680, Pt. A, §37 (RPR) .]

B. Proposed to the department a reasonable and mutually acceptable schedule for implementing that option; and [1993, c. 680, Pt. A, §37 (RPR) .]

C. Agreed to cease accepting waste at the unlicensed landfill on a date certain. [1993, c. 680, Pt. A, §37 (RPR) .]

An agreement under this subsection between a municipality and the department may not include any provision that prevents the municipality from using its unlicensed landfill for the disposal of municipal solid waste during the term of the agreement. Notwithstanding any provision of an agreement entered into under this subsection, the commissioner shall order an unlicensed landfill to cease operating if the commissioner finds that continued operation of the landfill poses an immediate hazard to the public health or the environment, including without limitation a threat to a public or private water supply.

[ 1993, c. 680, Pt. A, §37 (RPR) .]

**6-C. Summary of federal regulations.** The commissioner shall provide a summary of the criteria for municipal solid waste landfills set forth in 40 Code of Federal Regulations, Part 258 (1992) to each municipality operating a licensed or unlicensed municipal solid waste landfill on the effective date of this subsection. The summary must describe the operational and, where possible, the economic implications under federal and state rules of accepting waste at a municipal solid waste landfill after October 8, 1993.

[ 1993, c. 680, Pt. A, §37 (RPR) .]

**6-D. Solid waste facilities licensed under rules valid on or after May 24, 1989.** A solid waste facility license issued under applicable solid waste management rules valid on or after May 24, 1989 remains in effect unless modified under section 341-D, subsection 3 or revoked or suspended under section 342, subsection 11-B. These licensees must:

A. Comply with applicable operating rules adopted by the board; [1993, c. 680, Pt. A, §37 (NEW) .]

B. Comply with annual facility reporting rules adopted by the board; and [1993, c. 680, Pt. A, §37 (NEW) .]

C. Beginning 5 years after the date of issuance of the license, pay an annual facility reporting fee established by the commissioner. The annual fee established in this paragraph must be an amount equal to 20% of the relicensing fee that would have applied to that facility. [1993, c. 680, Pt. A, §37 (NEW).]

Notwithstanding the terms of this subsection, a license issued to a solid waste facility that is not a solid waste landfill may be voluntarily surrendered by the license holder upon department approval.

[ 2015, c. 124, §8 (AMD) .]

**6-E. Unlicensed wood-waste, construction and demolition debris landfills.** An unlicensed municipal solid waste landfill accepting waste consisting exclusively of wood, landscape refuse or construction and demolition debris and operating as of the effective date of this subsection, may:

A. Continue to operate until April 9, 1994; and [1993, c. 732, Pt. C, §19 (NEW).]

B. Continue to operate until December 31, 1995 if:

(1) The landfill was operating as of December 31, 1993; and

(2) The landfill is a separate and discrete disposal unit that does not overlie or overlap a municipal solid waste landfill that accepts or has accepted "household waste" as defined in 40 Code of Federal Regulations, Part 288, Section 258.2. [1993, c. 732, Pt. C, §19 (NEW).]

Municipalities continuing to operate unlicensed wood-waste, construction and demolition debris landfills under paragraph B shall submit a progress report to the department on or before January 31, 1995. The report must include a description of the alternative handling and disposal method that the town plans to implement prior to December 31, 1995 and an implementation schedule.

Notwithstanding this subsection, the commissioner shall order an unlicensed landfill to cease operating if the commissioner finds that continued operation of the landfill poses an immediate hazard to the public health or the environment, including without limitation a threat to a public or private water supply.

[ 1993, c. 732, Pt. C, §19 (NEW) .]

**6-F. Agreements regarding unlicensed wood-waste, construction and demolition debris landfills operating after December 31, 1995.** The commissioner may enter into an agreement with a municipality operating an unlicensed wood-waste, construction and demolition debris landfill as authorized under subsection 6-E, paragraph B, allowing that municipality to continue operating after December 31, 1995, if:

A. The municipality agrees to comply with the applicable operating requirements of rules adopted by the board pertaining to site access, litter control, erosion prevention, side slopes, compaction, cover, open burning and fire protection; [1995, c. 160, §1 (NEW).]

B. The municipality is conducting a groundwater quality monitoring program at the landfill as of the effective date of this subsection and agrees to continue the program for the life of the facility, or the municipality implements, as a term of the agreement, a groundwater monitoring program approved by the department; and [1995, c. 160, §1 (NEW).]

C. The municipality submits a facility site plan and narrative that indicate current and proposed final landfill grades and describe the general operating plan and proposed landfilling sequence at the site. [1995, c. 160, §1 (NEW).]

Agreements entered into pursuant to the provisions of this subsection must be for terms of sufficient duration to allow for the planned use of remaining site capacity and the proper closure of these landfills. The department shall consider the terms of these agreements on a case-specific basis, based upon the information submitted in conformance with paragraph C.

Unlicensed wood-waste, construction and demolition debris landfills may not, under the terms of agreements entered into pursuant to this subsection, expand horizontally onto areas where waste has not previously been disposed of, unless the area is licensed under the applicable provisions of this chapter. Notwithstanding this

subsection the commissioner shall order an unlicensed landfill to cease operating if the commissioner finds that continued operation of the landfill poses an immediate hazard to the public health or the environment, including, but not limited to, a threat to a public or private water supply.

[ 1995, c. 160, §1 (NEW) .]

**7. Criminal or civil record.** The department may refuse to grant a license under this article if it finds that the applicant or, if the applicant is other than a natural person, any person having legal interest in the applicant has been found guilty of a criminal or civil violation of laws administered by the department or other laws of the State, other states, the United States or another country.

[ 1993, c. 680, Pt. A, §37 (RPR) .]

**8. Exemption.** The disposal of construction and demolition debris, land clearing debris and wood wastes is exempt from the requirements of this chapter when:

- A. The disposal facility is less than one acre in size; [1993, c. 680, Pt. A, §37 (RPR) .]
- B. The disposal facility is located on the same parcel of property where the waste is generated; and [1993, c. 680, Pt. A, §37 (RPR) .]
- C. Only one exempt disposal facility is located on a single parcel of property, except that additional disposal facilities on the same parcel that are less than one acre in size and that were in existence prior to the effective date of this subsection do not require a license under this chapter if no additional waste is disposed of in those additional facilities after the effective date of this subsection. [1993, c. 680, Pt. A, §37 (RPR) .]

[ 1993, c. 680, Pt. A, §37 (RPR) .]

**9. Host community agreements.** The following provisions apply to a solid waste disposal facility, except that this subsection does not apply to a facility owned by the State or to a facility described in section 1303-C, subsection 6, paragraphs E or F.

- A. The department may not issue a license for a solid waste disposal facility unless a host community agreement is in place as described in this subsection. [2007, c. 406, §2 (AMD) .]
- A-1. A solid waste disposal facility must have in place a host community agreement with all applicable host communities during the development and operation and through closure of that facility, except that a solid waste disposal facility owned by a municipality that meets the provisions of section 1303-C, subsection 6, paragraph B is not required to have in place a host community agreement with the host community that is the geographic site of the facility. A host community agreement for the purposes of this section must, when applicable, include the provisions set forth in paragraph B, except that a host community agreement in effect prior to the effective date of this paragraph is not required to include the provisions set forth in paragraph B. [2007, c. 406, §2 (NEW) .]
- B. Based upon the nature, size and projected impacts of the proposed facility, host community agreements must, when applicable, include provisions regarding:
  - (1) Improvement, maintenance and repair of local roads directly affected by traffic to and from the facility and of other infrastructural elements directly affected by the facility;
  - (2) Development and maintenance of adequate local emergency response capacity to accommodate the facility;
  - (3) Financial support for personnel or other means to provide technical assistance to the municipality in interpreting data and to advise the municipality on other technical issues concerning the facility; and
  - (4) Other issues determined on a case-specific basis by the applicant and municipality to be appropriate given the nature of the proposed facility.



The department shall adopt rules concerning the expenditure of funds made available to a municipality under the provisions of subparagraph (3) to ensure that funds are used to provide direct technical support to the municipality necessary for the conduct of municipal planning and decision making. [1995, c. 465, Pt. A, §16 (NEW); 1995, c. 465, Pt. C, §2 (AFF).]

C. In the event that the parties to a host community agreement required under this subsection cannot agree on the terms of agreement, the parties shall submit the dispute for resolution in accordance with this paragraph.

(1) The parties shall submit the dispute for mediation. The commissioner shall present to the parties a list of 5 experienced and qualified mediators. Each party may strike 2 names from the list. After each party has been afforded 2 opportunities to strike, either the sole remaining person or the first unchallenged person on the list must be appointed by the commissioner as the mediator assigned to mediate the dispute. In assembling the list of proposed mediators, the commissioner may consider the panel of mediators offered by the Office of Court Alternative Dispute Resolution Service created in Title 4, section 18-B.

(2) If mediation fails to result in an agreement between the parties, the parties shall submit the dispute for arbitration. The commissioner shall present to the parties a list of 5 experienced and qualified arbitrators. Each party may strike 2 names from the list. After each party has been afforded 2 opportunities to strike, either the sole remaining person or the first unchallenged person on the list must be appointed by the commissioner as the arbitrator assigned to determine the dispute. In assembling the list of proposed arbitrators, the commissioner may consider the panels of arbitrators offered by the Office of Court Alternative Dispute Resolution Service created in Title 4, section 18-B or by the American Arbitration Association or a successor organization.

(a) Both the facility and the host community will be bound by the decision of the arbitrator.

(b) Unless otherwise provided for in this subparagraph, the arbitration must be conducted in accordance with the rules of the American Arbitration Association or a successor organization for the conduct of commercial arbitration proceedings.

(c) Costs associated with the arbitration must be shared equally between the parties.

(d) The arbitrator shall submit the decision to the commissioner.

(e) Either party may appeal the decision of the arbitrator to the Superior Court. [2007, c. 406, §2 (NEW).]

[ 2007, c. 406, §2 (AMD) . ]

**10. Water supply testing.** Upon written request to the department from the owner of property abutting a commercial solid waste disposal facility that accepts special waste for landfilling, the department shall require the facility licensee to have conducted biannual sampling and analysis of a private water supply well used by the requestor for drinking water. This subsection applies only if the requestor owned and resided and the private water supply well existed on that property prior to the time the property became an abutting property. For purposes of this subsection, "abutting" means both contiguous to the property on which the facility is located, including directly across a public or private right-of-way, and within one mile of the location of the facility.

A. Sampling and analysis must be conducted by a certified laboratory selected by the property owner in a manner specified by, and that meets criteria developed by, the department. The criteria must allow for split samples to be taken by the laboratory selected by the property owner and by a laboratory selected by the licensee. [1999, c. 691, §1 (NEW).]

B. The water supply must be analyzed for all parameters or chemical constituents determined by the department to be appropriate and consistent with department rules regarding solid waste management. The laboratory performing the sampling and analysis shall provide written copies of sample results to the licensee, the landowner and the commissioner. [1999, c. 691, §1 (NEW).]

C. If the analysis indicates possible contamination from the facility, the commissioner shall require the licensee to conduct additional sampling and analysis in conformance with department rules regarding solid waste management to determine more precisely the nature, extent and source of contamination. The commissioner shall, if necessary, require this sampling beyond the boundaries of the property abutting the facility. [1999, c. 691, §1 (NEW).]

D. If a facility adversely affects a public or private water supply by contamination, pollution, degradation, diminution or other means that result in a violation of the state drinking water standards as determined by the commissioner, the licensee shall restore the affected supply at no cost to the consumer or replace the affected supply with an alternative source of water that is of like quantity and quality to the original supply at no cost to the consumer. [1999, c. 691, §1 (NEW).]

E. The licensee shall provide owners of property abutting the facility with written notice of their rights under this subsection on a form prepared by the commissioner as follows:

- (1) On or before December 1, 2000, for a commercial solid waste disposal facility that accepts special waste for landfilling licensed under this chapter prior to October 1, 2000; and
- (2) At or before the time of license issuance for a commercial solid waste disposal facility that accepts special waste for landfilling licensed under this chapter on or after October 1, 2000. [1999, c. 691, §1 (NEW).]

This subsection applies to a new, expanded or existing commercial solid waste disposal facility that accepts special waste for landfilling. When licensing any such facility, the department shall incorporate the provisions of this subsection into the license. The provisions of this subsection apply only to a commercial solid waste disposal facility that accepts special waste for landfilling.

[ 1999, c. 691, §1 (NEW) .]

**11. Waste generated within the State.** Consistent with the Legislature's findings in section 1302, a solid waste disposal facility owned by the State may not be licensed to accept waste that is not waste generated within the State. For purposes of this subsection, "waste generated within the State" includes residue and bypass generated by incineration, processing and recycling facilities within the State or waste, whether generated within the State or outside of the State, if it is used for daily cover, frost protection or stability or is generated within 30 miles of the solid waste disposal facility.

[ 2007, c. 414, §3 (NEW) .]

**12. Citizen advisory committee notification.** Except for applications for minor alterations, the department may not issue a license or an amendment to a license to a solid waste disposal facility owned by the State unless the provisions of this subsection are satisfied.

A. For purposes of this subsection, the following terms have the following meanings.

- (1) "Appointing authority" means an entity authorized pursuant to law or resolve to appoint a member to a citizen advisory committee.
- (2) "License" means a license, permit, order or approval issued by the department pursuant to this chapter.
- (3) "Minor alteration" means an alteration that in the department's judgment does not have a potential to impact the environment or public health or welfare or to create a nuisance. [ 2011, c. 543, §1 (NEW) .]

B. The owner or operator of a solid waste disposal facility shall:

(1) At least 10 days prior to filing an application for a license or an amendment to a license with the department, send to each member of the relevant citizen advisory committee established pursuant to law or resolve a notice that a copy of the license or amendment application will be sent to each appointing authority in accordance with subparagraph (2). The notice must be sent by United States Postal Service, certified mail, return receipt requested; and

(2) At the time of filing an application for a license or an amendment to a license with the department, send to each municipality and any other appointing authority a copy of the license or amendment application. The copy must be sent by United States Postal Service, certified mail, return receipt requested or by a commercial mail delivery service with a comparable proof of delivery. [2011, c. 543, §1 (NEW).]

C. When filing a license or amendment application, the owner or operator of a solid waste disposal facility shall submit to the department a copy of the certified mail receipts or comparable proof of delivery received under paragraph B. [2011, c. 543, §1 (NEW).]

The department may not issue a license or an amendment to a license prior to 30 days after the latest date of mailing of an application or notice sent in accordance with paragraph B.

[ 2011, c. 543, §1 (NEW) .]

#### SECTION HISTORY

1987, c. 517, §25 (NEW). 1987, c. 557, §1 (AMD). 1989, c. 157, (AMD). 1989, c. 585, §§E24-28 (AMD). 1989, c. 890, §§A40, B242 (AMD). 1991, c. 43, §§1,2 (AMD). 1991, c. 43, §§4,5 (AFF). 1991, c. 72, §7 (AMD). 1991, c. 169, (AMD). 1991, c. 241, (AMD). 1991, c. 622, §X14 (AMD). 1991, c. 644, §1 (AMD). 1991, c. 745, §3 (AMD). 1993, c. 191, §1 (AMD). 1993, c. 191, §4 (AFF). 1993, c. 378, §§5,6 (AMD). 1993, c. 383, §36 (AMD). 1993, c. 680, §A37 (RPR). 1993, c. 732, §§B1,2,C19 (AMD). 1995, c. 73, §§1, 2 (AMD). 1995, c. 126, §1 (AMD). 1995, c. 160, §1 (AMD). 1995, c. 465, §§A13-16 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 642, §9 (AMD). 1997, c. 393, §§A47,48 (AMD). 1999, c. 393, §5 (AMD). 1999, c. 691, §1 (AMD). 2001, c. 212, §5 (AMD). 2007, c. 406, §2 (AMD). 2007, c. 414, §§2, 3 (AMD). 2007, c. 583, §§2-4 (AMD). 2009, c. 412, Pt. A, §1 (AMD). 2011, c. 543, §1 (AMD). 2011, c. 682, §38 (REV). 2013, c. 243, §1 (AMD). 2013, c. 458, §1 (AMD). 2015, c. 124, §8 (AMD).

### **§1310-O. CAPACITY NEEDS ANALYSIS**

**(REPEALED)**

#### SECTION HISTORY

1987, c. 517, §25 (NEW). 1989, c. 585, §E29 (RP).

### **§1310-P. ESCROW CLOSURE ACCOUNTS**

**(REPEALED)**

#### SECTION HISTORY

1987, c. 517, §25 (NEW). 1989, c. 890, §§A40,B243, 244 (AMD). 1993, c. 378, §7 (RP).

## §1310-Q. TRANSFER OF LICENSE

**1. Transfer.** A person may not transfer a license issued pursuant to this Title without the transfer of the license being approved by the department prior to transfer of the ownership of the property, facility or structure that constitutes or is part of the solid waste disposal facility. The department, at its discretion, may require that the proposed new owner of the facility apply for a new license or may approve the transfer of the existing license upon a satisfactory showing that the new owner can abide its terms and conditions and will be able to comply with the provisions of this Title, except that the department may not approve the transfer of an existing license of a municipal solid waste disposal facility to a private entity and the department may not approve the transfer of the license of a solid waste facility subject to subsection 2 unless the provisions of that subsection are satisfied. The department shall consider the extent to which the disposal facility was sited and developed and is currently operated to meet the capacity needs of municipalities within a specific geographic region. The department shall approve the transfer of license when, in addition to all other requirements of this Title, the applicant has demonstrated that:

A. The facility will continue to be operated to meet the municipal disposal capacity needs for which the facility was sited and developed and for which it is currently operated; [1987, c. 557, §2 (NEW) .]

B. The applicant has made substantially equivalent, alternative provisions to satisfy these disposal capacity needs; or [1987, c. 557, §2 (NEW) .]

C. These disposal capacity needs no longer exist. [1987, c. 557, §2 (NEW) .]

[ 2009, c. 380, §1 (AMD); 2009, c. 380, §2 (AFF) .]

**2. Transfers of solid waste license for a facility that incinerates municipal solid waste or special waste.** In addition to the provisions of subsection 1, during the stated term of any waste handling contract between a solid waste facility that incinerates municipal solid waste or special waste and the host community in which the facility is geographically sited, the department may approve the transfer of a solid waste facility license from the solid waste facility only after the expiration of a due diligence review period for the host community in which the facility is geographically sited, which must conclude within 180 days of the date of filing of the application for transfer of the license. For purposes of this section, any change of owner or operator of the solid waste facility, whether accomplished through sale, merger, lease, sale of stock, assignment or otherwise, is subject to the requirement set forth in this subsection. Any facility owned wholly or in part by a regional association pursuant to section 1304-B, subsection 5 is exempt from this subsection. A transfer to a host community in which the facility is geographically sited is exempt from this subsection.

The board shall decide all applications for transfer of a license subject to this subsection. The board shall hold a public hearing on a transfer application within or in the vicinity of the municipality in which the facility is located after expiration of the due diligence review period prescribed in this subsection.

[ 2009, c. 380, §1 (NEW); 2009, c. 380, §2 (AFF) .]

### SECTION HISTORY

1987, c. 517, §25 (NEW). 1987, c. 557, §2 (RPR). 1989, c. 890, §§A40,B245 (AMD). 2005, c. 612, §3 (AMD). 2009, c. 380, §1 (AMD). 2009, c. 380, §2 (AFF).

## §1310-R. TRANSITION PROVISIONS

**1. General.** Except as otherwise provided, the provisions of this article apply to any new, expanded or existing solid waste disposal facility licensed or relicensed after the effective date of this article.

[ 1987, c. 517, §25 (NEW) .]

**2. Recycling.** The recycling requirements shall apply as follows.

A. The department shall apply the provisions of section 1310-N, subsection 5-A, paragraph A, subparagraph (1) when relicensing any solid waste disposal facility, except that, to the extent that waste disposal contracts in effect on June 29, 1987 are inconsistent with section 1310-N, subsection 5-A, paragraph A, subparagraph (1), those provisions apply at the expiration of the term of those contracts. [2007, c. 583, §5 (AMD).]

B. The department shall require an applicant for a new or expanded solid waste disposal facility or for a license renewal submitting a complete application prior to the adoption of the state plan to demonstrate that the facility furthers the purposes of section 2101 and satisfies the regulations under section 1310-N. [1989, c. 585, Pt. E, §30 (AMD); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §246 (AMD).]

C. The provisions of section 1310-N, subsection 5-A, paragraph A, subparagraph (2) do not apply to the relicensing of any solid waste disposal facility licensed prior to June 29, 1987. [2007, c. 583, §6 (AMD).]

[ 2007, c. 583, §§5, 6 (AMD) .]

**3. Public benefit.** The public benefit requirements shall apply as follows.

A. [1989, c. 585, Pt. E, §30 (RP).]

A-1. The department shall require an applicant for a new or expanded solid waste disposal facility submitting a complete application prior to the initial adoption of the state plan to submit such information as the department requires to demonstrate that the proposed facility provides a substantial public benefit, including the information described in former section 1310-O. [1989, c. 585, Pt. E, §30 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §247 (AMD).]

B. The provisions of section 1310-N, subsection 1, paragraph B, and section 1310-N, subsection 3, do not apply to the relicensing of a solid waste disposal facility licensed prior to June 29, 1987. [1989, c. 585, Pt. E, §30 (AMD).]

C. [1995, c. 465, Pt. A, §17 (RP); 1995, c. 465, Pt. C, §2 (AFF).]

[ 1995, c. 465, Pt. A, §17 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

**4. Incineration facilities.**

[ 1995, c. 465, Pt. A, §18 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

**SECTION HISTORY**

1987, c. 517, §25 (NEW). 1989, c. 585, §§E30,E31 (AMD). 1989, c. 890, §§A40,B246- 248 (AMD). 1995, c. 465, §§A17,18 (AMD). 1995, c. 465, §C2 (AFF). 2007, c. 583, §§5, 6 (AMD).

## **§1310-S. PUBLIC AND LOCAL PARTICIPATION**

In addition to provisions for public participation provided pursuant to Title 5, chapter 375, the following provisions apply to an application for a solid waste disposal facility. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §249 (AMD).]

**1. Notification.** A person applying for a license under this article or giving notice to the commissioner pursuant to section 485-A shall give, at the same time, written notice to the municipal officers of the municipality in which the proposed facility may be located and shall publish notice of the application in a newspaper of general circulation in the area.

[ 2011, c. 655, Pt. GG, §14 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**1-A. Preliminary notice.** Sixty days prior to submitting an application to the commissioner regarding a specific site for a solid waste disposal facility, the applicant shall notify by certified mail the municipal officers of the municipality in which the site is located or, in the unorganized territories, the county commissioners with jurisdiction over the site.

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §249 (AMD) .]

**2. Public hearing.** The department may hold an adjudicatory public hearing within the municipality in which the facility may be located or in a convenient location in the vicinity of the proposed facility. The department shall hold an adjudicatory public hearing on an application for a new or expanded commercial or state-owned solid waste disposal facility that accepts special waste upon request from a resident or a property owner in the municipality in which the proposed facility is located. Upon a timely request for an adjudicatory hearing from 5 or more residents in the municipality in which the facility is located or abutting property owners of the facility, the commissioner shall hold an adjudicatory public hearing on an application for a vertical increase in the approved final elevation that would increase the waste disposal capacity of a commercial or state-owned solid waste disposal facility that accepts special waste or the commissioner shall request that the board assume jurisdiction in accordance with section 344, subsection 2-A. At a hearing on an application for a vertical increase in the approved final elevation that would increase the waste disposal capacity, the testimony is limited to issues related to relevant standards of review under chapter 13, subchapter 1-A. The hearing must be conducted in accordance with Title 5, chapter 375, subchapter 4. Administrative expenses of a hearing held pursuant to this subsection and all costs incurred by the department in processing an application must be paid for by the person applying for the license as provided in department rules.

[ 2005, c. 341, §1 (AMD) .]

**3. Automatic municipal intervenor status.** The municipal officers, or their designees, from the municipality in which the facility would be located have intervenor status if they request it within 60 days of notification under subsection 1. The intervenor status granted under this subsection applies in any proceeding for a license under this article. Immediately upon the commissioner's receipt of such a request, the intervenors have all rights and responsibilities commensurate with this status.

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §249 (AMD) .]

**3-A. Automatic abutter intervenor status.** An abutting property owner has intervenor status in any public hearing held pursuant to subsection 2 if the property owner requests it no later than 10 days following public notice of the hearing. Immediately upon the commissioner's receipt of such a request, the intervenor has all rights and responsibilities commensurate with this status. A party granted intervenor status under this subsection is not eligible for intervenor assistance grants or reimbursements pursuant to subsection 4.

For purposes of this subsection, "abutting property owner" means an owner of property that is both contiguous to the property on which a facility is proposed and within 1 mile of the location of the proposed facility site, including property directly across a public or private right-of-way.

[ 1997, c. 624, §16 (NEW) .]

**4. Financial assistance.** The commissioner shall reimburse or make assistance grants for the direct expenses of intervention of any party granted intervenor status under subsection 3, not to exceed \$50,000. The board shall adopt rules governing the award and management of intervenor assistance grants and reimbursement of expenses to ensure that the funds are used in support of direct, substantive participation in the proceedings before the department. Allowable expenses include, without limitation, hydrogeological studies, waste generation and recycling studies, traffic analyses, the retention of expert witnesses and attorneys and other related items. Expenses not used in support of direct, substantive participation in the proceedings before the department, including attorney's fees related to court appeals, are not eligible for reimbursement under this subsection. Expenses otherwise eligible under this section that are incurred by the municipality after notification pursuant to subsection 1 are eligible for reimbursement under this subsection only if a completed application is accepted by the department. The commissioner may make an additional assistance grant not to exceed \$50,000, to be paid by the applicant as provided in department rules, to any party granted intervenor status under subsection 3 on an application for the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling when the intervenor demonstrates to the commissioner that the size, nature, location, geological setting or other relevant factors warrant additional expenditures for technical assistance. The board shall also establish rules governing:

A. The process by which an intervenor under subsection 3 may gain entry to the proposed facility site for purposes of reasonable inspection and site investigations under the auspices of the department; and [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §249 (AMD).]

B. The reduction in the maximum level of reimbursable costs to the extent the municipality establishes by local ordinance any substantially similar financial requirements of the applicant. [1987, c. 517, §25 (NEW).]

[ 1997, c. 624, §17 (AMD) .]

**5. Unincorporated townships and plantations.** For the purposes of this section, county commissioners shall act as municipal officers for unincorporated townships, and assessors of plantations shall act as municipal officers for plantations.

[ 1987, c. 557, §3 (NEW) .]

#### SECTION HISTORY

1987, c. 517, §25 (NEW). 1987, c. 557, §3 (AMD). 1989, c. 15, §§1,2 (AMD). 1989, c. 585, §E32 (AMD). 1989, c. 890, §§A40,B249 (AMD). 1991, c. 794, §1 (AMD). 1993, c. 378, §8 (AMD). 1995, c. 465, §A19 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A25 (AMD). 1997, c. 624, §§15-17 (AMD). 2005, c. 341, §1 (AMD). 2011, c. 655, Pt. GG, §14 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

### §1310-T. APPLICATION FEE

In addition to any fees imposed pursuant to section 352, the applicant shall pay a fee of \$50,000 at the time of filing an application for a solid waste disposal facility. An application is considered incomplete and the department shall defer any review or processing of the application until the applicant has paid the full \$50,000 fee. The fee must be deposited in the Maine Environmental Protection Fund and used only to make reimbursements and grants to the intervenor in the applicant's license proceedings pursuant to section 1310-S. The applicant releases all control over this money and does not retain any rights to audit the spending of these funds once the fee has been deposited in the Maine Environmental Protection Fund. Any portion of the fee not disbursed by the department for these purposes is reimbursed to the applicant, together with any interest that may have accrued on that portion. Upon request, the commissioner shall provide an audit report to the

applicant after all the application and appeal proceedings before the department have concluded. [1989, c. 15, §3 (AMD); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §250 (AMD).]

#### SECTION HISTORY

1987, c. 517, §25 (NEW). 1989, c. 15, §3 (AMD). 1989, c. 890, §§A40,B250 (AMD).

### §1310-U. MUNICIPAL ORDINANCES

Municipalities are prohibited from enacting stricter standards than those contained in this chapter and in the solid waste management rules adopted pursuant to this chapter governing the hydrogeological criteria for siting or designing solid waste disposal facilities or governing the engineering criteria related to waste handling and disposal areas of a solid waste disposal facility. Except as provided in section 2173, municipalities are further prohibited from enacting or applying ordinances that regulate solid waste disposal facilities owned by the State or a state agency or a regional association. [2011, c. 655, Pt. GG, §15 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

Under the municipal home rule authority granted by the Constitution of Maine, Article VIII, Part Second and Title 30-A, section 3001, municipalities, except as provided in this section, may enact ordinances with respect to solid waste facilities that contain standards the municipality finds reasonable, including, without limitation, conformance with federal and state solid waste rules; fire safety; traffic safety; levels of noise heard outside the facility; distance from existing residential, commercial or institutional uses; ground water protection; surface water protection; erosion and sedimentation control; and compatibility of the solid waste facility with local zoning and land use controls, provided that the standards are not more strict than those contained in this chapter and in chapter 3, subchapter I, articles 5-A and 6 and the rules adopted under these articles. Municipal ordinances must use definitions consistent with those adopted by the board. [1995, c. 126, §2 (AMD).]

A municipality adopting an ordinance under this section shall forward a copy of the ordinance to the commissioner within 30 days of its adoption. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §251 (AMD).]

#### SECTION HISTORY

1987, c. 517, §25 (NEW). 1989, c. 585, §E33 (RPR). 1989, c. 869, §A8 (AMD). 1989, c. 890, §§A40,B251 (AMD). 1991, c. 66, §A38 (AMD). 1995, c. 126, §2 (AMD). 1995, c. 656, §A26 (AMD). 2011, c. 655, Pt. GG, §15 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

### §1310-V. MORATORIUM

Prior to 91 days after the First Regular Session of the 113th Legislature adjourns, the department may not process or act upon any application or issue a license for a new commercial landfill facility or the substantial expansion of a commercial landfill facility. In processing applications after the moratorium, priority must be given to applications for commercial landfill facilities used for the disposal of solid waste that is generated by an energy recovery facility designed to reduce the volume or alter the physical characteristics of municipal solid waste and to produce electricity through incineration. Notwithstanding the provisions of Title 1, section 302, any application for a new or substantially expanded commercial landfill facility pending or filed after the effective date of this article and any application for an expanded commercial landfill facility filed after October 8, 1987, is subject to departmental rules regarding solid waste adopted pursuant to section 1304 and the provisions of Private and Special Law 1987, chapter 28. Notwithstanding other provisions of this Title, the department may not issue a license for a new or substantially expanded commercial landfill facility under this article or for an expanded commercial landfill facility, the application



for which was filed after October 8, 1987, until the board has adopted rules pursuant to the provisions of Private and Special Law 1987, chapter 28. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §252 (AMD).]

For the purposes of this section, the term, "commercial landfill facility" is defined pursuant to section 1303-C, except that the term does not include a waste facility that is controlled by the owners of an energy recovery facility or facilities and that is used exclusively for the disposal of ash or other wastes processed and thereby generated by such energy recovery facility or facilities. [1989, c. 878, Pt. B, §41 (AMD).]

#### SECTION HISTORY

1987, c. 517, §25 (NEW). 1987, c. 557, §4 (AMD). 1989, c. 878, §B41 (AMD). 1989, c. 890, §§A40,B252 (AMD).

### §1310-W. COUNTY COMMISSIONERS

*(REPEALED)*

#### SECTION HISTORY

1987, c. 557, §5 (NEW). 1987, c. 706, §1 (RP).

### §1310-X. FUTURE COMMERCIAL WASTE DISPOSAL FACILITIES

**1. New facilities.** Notwithstanding Title 1, section 302, the department may not approve an application for a new commercial solid waste disposal or biomedical waste disposal or treatment facility after September 30, 1989, including any applications pending before the department on or after September 30, 1989.

[ 1993, c. 355, §52 (AMD) .]

**2. Relicense or transfer of license.** The department may relicense or approve a transfer of license for a commercial solid waste disposal or biomedical waste disposal or treatment facility after September 30, 1989, if the facility had been previously licensed by the department as a commercial solid waste disposal or biomedical waste disposal or treatment facility prior to October 6, 1989, and all other provisions of law have been satisfied.

[ 1995, c. 465, Pt. A, §20 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

**3. Expansion of facilities.** The department may license an expansion of a commercial solid waste disposal or biomedical waste disposal or treatment facility after September 30, 1989 if:

A. The department has previously licensed the facility prior to October 6, 1989; [1991, c. 297, §1 (RPR) .]

B. The department determines that the proposed expansion is contiguous with the existing facility and:

(1) Is located on property owned on December 31, 1989 by the licensee or by a corporation or other business entity under common ownership or control with the licensee; or

(2) For a commercial solid waste disposal facility that is a commercial landfill facility that is not under order or agreement to close, is located on property owned by the licensee; and [2011, c. 566, §1 (AMD) .]

C. For a commercial solid waste disposal facility the commissioner or the department determines as provided in section 1310-N, subsection 3-A that the facility provides a substantial public benefit.

[1995, c. 465, Pt. A, §21 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

The department may not process or act upon any application or license an expansion of a commercial landfill facility pursuant to this subsection until the applicant demonstrates to the department that it is in full compliance with the host community agreement pursuant to section 1310-N, subsection 9, if any, on the existing facility and until a host community agreement amendment is executed to account for the proposed expansion.

An expanded facility may not receive a property tax exemption on real or personal property.

[ 2011, c. 566, §1 (AMD) .]

**4. Exemption.** The following are exempt from the provisions of this section:

A. A commercial biomedical waste disposal or treatment facility, if at least 51% of the facility is owned by a licensed hospital or hospitals as defined in Title 22, section 328, subsection 14 or a group of hospitals that are licensed under Title 22 acting through a statewide association of Maine hospitals or a wholly owned affiliate of the association; and [2003, c. 551, §17 (AMD) .]

B. Expansion of a commercial solid waste disposal facility, if the expansion will not result in an increase in the facility's disposal capacity and the expansion will not be used for solid waste disposal. [1995, c. 588, §1 (NEW) .]

[ 2003, c. 551, §17 (AMD) .]

**SECTION HISTORY**

1989, c. 585, §E34 (NEW). 1989, c. 869, §A9 (RPR). 1989, c. 878, §H8 (RPR). 1991, c. 297, §1 (RPR). 1991, c. 382, (AMD). 1993, c. 355, §52 (AMD). 1995, c. 68, §1 (AMD). 1995, c. 465, §§A20,21 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 588, §1 (AMD). 2003, c. 551, §17 (AMD). 2011, c. 566, §1 (AMD).

## §1310-Y. FINANCIAL ASSURANCE

An owner or operator of a solid waste disposal facility licensed under section 1310-N shall provide the department assurance of its financial ability to satisfy the estimated cost of corrective action for known releases from the facility and its financial capacity to satisfy the estimated cost of closure and postclosure care and maintenance at the facility for a period of at least 30 years after closure. The board may adopt rules that increase or decrease that postclosure care period, as long as those rules are consistent with applicable federal rules. The department may consider the use of more than one acceptable form of financial assurance per facility to satisfy the financial assurance requirement of this section. This section applies to all privately owned solid waste disposal facilities licensed by the department, including facilities licensed by the department before June 16, 1993. This section does not apply to a municipally owned or operated solid waste disposal facility that accepts exclusively special waste, construction and demolition debris, land-clearing debris or any combination of those types of waste or to a municipally owned or operated solid waste disposal facility licensed before June 16, 1993. [2001, c. 575, §1 (AMD) .]

**1. Acceptable forms of financial assurance.** Acceptable forms of financial assurance are:

A. A letter of credit; [1993, c. 378, §9 (NEW) .]

B. A surety bond; [1993, c. 378, §9 (NEW) .]

C. An escrow account; [1993, c. 378, §9 (NEW) .]

D. A reserve account calculated in a manner consistent with the United States Internal Revenue Code; [1993, c. 378, §9 (NEW) .]

E. An irrevocable trust account; or [1993, c. 378, §9 (NEW) .]

F. In the case of a municipal solid waste disposal facility, any of the allowable financial assurance mechanisms set forth in applicable federal rules. [1993, c. 378, §9 (NEW).]

[ 1993, c. 378, §9 (NEW) . ]

**1-A. Substitute requirements.** The department may substitute part of the acceptable forms of financial assurance under subsection 1 with one or more of the following requirements:

A. A current rating for its senior unsubordinated debt of AAA, AA, A or BBB as issued by Standard and Poor's Corporation or Aaa, Aa, A or Baa as issued by Moody's Investors Services, Inc.; [2001, c. 575, §1 (NEW).]

B. A ratio of less than 1.5 comparing total liabilities to net worth; or [2001, c. 575, §1 (NEW) . ]

C. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10,000,000, to total liabilities. [2001, c. 575, §1 (NEW) . ]

[ 2001, c. 575, §1 (NEW) . ]

**2. Report.** An owner or operator of a solid waste disposal facility shall annually prepare a report containing a sworn statement providing the year-end balance of any escrow, trust or reserve account established under this section. That report must be submitted to the commissioner by March 31st of each year or such other date as the commissioner may designate.

[ 1993, c. 378, §9 (NEW) . ]

#### SECTION HISTORY

1993, c. 378, §9 (NEW). 1995, c. 44, §1 (AMD). 2001, c. 315, §4 (AMD). 2001, c. 575, §1 (AMD).

## §1310-Z. LABORATORY ANALYSES

Laboratory analyses required in support of the licensing, operation, closure or postclosure care of a solid waste facility must be performed by a qualified laboratory. Six months after the adoption of laboratory certification rules required by Title 22, section 567, all laboratories must be certified or exempted from certification pursuant to those rules. [1993, c. 378, §9 (NEW) . ]

#### SECTION HISTORY

1993, c. 378, §9 (NEW) .

## §1310-AA. PUBLIC BENEFIT DETERMINATION

**1. Application for public benefit determination.** Prior to submitting an application under section 1310-N for a license for a new or expanded solid waste disposal facility, a person must apply to the commissioner for a determination of whether the proposed facility provides a substantial public benefit.

[ 1995, c. 465, Pt. A, §22 (NEW); 1995, c. 465, Pt. C, §2 (AFF) . ]

**1-A. Public benefit determination for acceptance by publicly owned solid waste landfills of waste generated out of state.** Prior to accepting waste that is not generated within the State, a solid waste facility that is subject to this subsection shall apply to the commissioner for a determination of whether the acceptance of the waste provides a substantial public benefit.

A. A facility is subject to this subsection if the facility is a solid waste landfill that is not a commercial solid waste disposal facility pursuant to:

(1) Section 1303-C, subsection 6, paragraph A-2;

(2) Section 1303-C, subsection 6, paragraph B-2; or

(3) Section 1303-C, subsection 6, paragraph C-2. [2007, c. 338, §3 (NEW); 2007, c. 338, §5 (AFF).]

B. A facility that is subject to this subsection may not accept waste that is not generated within the State unless the commissioner determines that the acceptance of the waste provides a substantial public benefit. [2007, c. 338, §3 (NEW); 2007, c. 338, §5 (AFF).]

C. The commissioner shall make the determination of public benefit in accordance with subsections 2 and 3. [2007, c. 338, §3 (NEW); 2007, c. 338, §5 (AFF).]

D. For purposes of this subsection, "waste that is generated within the State" includes residue and bypass generated by incineration, processing and recycling facilities within the State; waste whether generated within the State or outside of the State used for daily cover, frost protection or stability in accordance with all applicable rules and licenses; and waste generated within 30 miles of the solid waste disposal facility. [2011, c. 566, §2 (AMD).]

[ 2011, c. 566, §2 (AMD) .]

**1-B. State-owned solid waste disposal facilities.** This subsection applies to public benefit determinations for solid waste disposal facilities owned by the State.

A. The department may not process or act upon any application for a new, modified or amended solid waste license for a solid waste disposal facility acquired by the State after January 1, 2007, including an application to expand, until the facility has applied for and received a public benefit determination. [2013, c. 243, §2 (NEW).]

B. A solid waste disposal facility owned by the State before January 1, 2007 is deemed to hold a public benefit determination for the licensed disposal capacity at the facility on the effective date of this subsection. The department may require the holder of a public benefit determination under this paragraph to submit an application for a modified public benefit determination if the department finds that a material change in the underlying facts or circumstances has occurred or is proposed, including, but not limited to, a change in the disposal capacity or a change of the owner or operator of the facility. The department may not process or act upon any application to expand a solid waste disposal facility owned by the State before January 1, 2007 until the facility has applied for and received a public benefit determination. [2013, c. 243, §2 (NEW).]

[ 2013, c. 243, §2 (NEW) .]

**2. Process.** Determinations by the commissioner under this section are not subject to Title 5, chapter 375, subchapter 4. The applicant shall provide public notice of the filing of an application under this section in accordance with department rules. The department shall accept written public comment during the course of processing the application. In making the determination of whether the facility under subsection 1 or the acceptance of waste that is not generated within the State under subsection 1-A provides a substantial public benefit, the commissioner shall consider the state plan, written information submitted in support of the application and any other written information the commissioner considers relevant. The commissioner shall hold a public meeting in the vicinity of the proposed facility under subsection 1 or the solid waste landfill under subsection 1-A to take public comments and shall consider those comments in making the determination. The commissioner shall issue a decision on the matter within 60 days of receipt of the application. The commissioner's decisions under this section may be appealed to the board, but the board is not authorized to assume jurisdiction of a decision under this section.

[ 2011, c. 566, §3 (AMD) .]

**3. Standards for determination.** The commissioner shall find that the proposed facility under subsection 1 or the acceptance of waste that is not generated within the State under subsection 1-A provides a substantial public benefit if the applicant demonstrates to the commissioner that the proposed facility or the acceptance of waste that is not generated within the State:

A. Meets immediate, short-term or long-term capacity needs of the State. For purposes of this paragraph, "immediate" means within the next 3 years, "short-term" means within the next 5 years and "long-term" means within the next 10 years. When evaluating whether a proposed facility meets the capacity needs of the State, the commissioner shall consider relevant local and regional needs as appropriate and the regional nature of the development and use of disposal capacity due to transportation distances and other factors; [2011, c. 566, §4 (AMD).]

B. Except for expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling, is consistent with the state waste management and recycling plan and promotes the solid waste management hierarchy as set out in section 2101; [2011, c. 566, §5 (AMD).]

C. Is not inconsistent with local, regional or state waste collection, storage, transportation, processing or disposal; and [2007, c. 338, §3 (AMD); 2007, c. 338, §5 (AFF).]

D. For a determination of public benefit under subsection 1-A only, facilitates the operation of a solid waste disposal facility and the operation of that solid waste disposal facility would be precluded or significantly impaired if the waste is not accepted. [2007, c. 655, §10 (AMD).]

[2011, c. 566, §§4,5 (AMD).]

**4. Application.** This section does not apply to facilities described in section 1310-N, subsection 3-A, paragraph A.

[2009, c. 348, §1 (AMD); 2009, c. 348, §3 (AFF).]

**5. Modifications.** Public benefit determinations may be revised by the department if the department finds that a material change in the underlying facts or circumstances upon which a public benefit determination was based has occurred or is proposed, including, but not limited to, a change related to disposal capacity or a change of the owner or operator of a facility. The department may require the holder of a public benefit determination to submit an application for modification of that determination if the department finds that a change in the underlying facts or circumstances has occurred or is proposed.

[2011, c. 566, §6 (AMD).]

### **6. Substantial public benefit.**

[2013, c. 243, §3 (RP).]

**7. Decision making.** When making a decision on an application for a determination of public benefit, the commissioner:

A. May issue a full or partial approval of an application, with or without conditions; and [2011, c. 566, §7 (NEW).]

B. For an application related to a state-owned solid waste disposal facility, shall conduct a review that is in accordance with the provisions of this section and is independent of any other contract or agreement between the State and the facility operator or any other party concerning the operation or development of the facility. [2011, c. 566, §7 (NEW).]

[2011, c. 566, §7 (NEW).]

### SECTION HISTORY

RR 1995, c. 1, §33 (COR). 1995, c. 314, §1 (NEW). 1995, c. 465, §A22 (NEW). 1995, c. 465, §C2 (AFF). 2007, c. 338, §3 (AMD). 2007, c. 338, §5 (AFF). 2007, c. 414, §§4, 5 (AMD). 2007, c. 655, §10 (AMD). 2009, c. 348, §§1, 2 (AMD). 2009, c. 348, §3 (AFF). 2011, c. 566, §§2-7 (AMD). 2013, c. 243, §§2, 3 (AMD).

## **§1310-BB. USE OF UNAUTHORIZED TIRE MANAGEMENT SITE OR FACILITY** ***(REPEALED)***

### SECTION HISTORY

RR 1995, c. 1, §33 (RNU). 1995, c. 314, §1 (NEW). 1995, c. 579, §1 (RP).

## Subchapter 2: SOLID WASTE MANAGEMENT SUBSIDY

### **§1311. FINDINGS; INTENT** ***(REALLOCATED TO TITLE 38, SECTION 1310-A)*** ***(REPEALED)***

#### SECTION HISTORY

1979, c. 383, §11 (NEW). 1979, c. 511, §2 (NEW). 1979, c. 640, §1 (AMD). 1979, c. 663, §238 (RAL). 1983, c. 566, §43 (RP).

### **§1312. SOLID WASTE SUBSIDY** ***(REPEALED)***

#### SECTION HISTORY

1979, c. 511, §2 (NEW). 1979, c. 640, §2 (AMD). 1983, c. 566, §44 (RP).

### **§1313. ELIGIBLE FACILITIES** ***(REPEALED)***

#### SECTION HISTORY

1979, c. 511, §2 (NEW). 1979, c. 640, §3 (RPR). 1983, c. 566, §45 (RP).

### **§1314. ELIGIBLE COSTS** ***(REPEALED)***

#### SECTION HISTORY

1979, c. 511, §2 (NEW). 1979, c. 640, §§4-6 (AMD). 1983, c. 566, §46 (RP).

### **§1315. ADMINISTRATION** ***(REPEALED)***

#### SECTION HISTORY

1979, c. 511, §2 (NEW). 1979, c. 640, §7 (AMD). 1983, c. 566, §47 (RP).

## Subchapter 2-A: TIRE STOCKPILE ABATEMENT

## §1316. PROHIBITION

A person may not handle used motor vehicle tires at an uncontrolled tire stockpile in violation of an order issued under this subchapter. [1991, c. 517, Pt. A, §2 (NEW).]

### SECTION HISTORY

1991, c. 517, §A2 (NEW).

## §1316-A. INVESTIGATION AND ENFORCEMENT

If the commissioner finds upon investigation that an area or location where used motor vehicle tires are or were handled, stored or disposed of is not licensed or is in violation of the solid waste management rules relating to tires and presents a significant fire hazard or a threat to public health or safety or to the environment, the commissioner may designate that location as an uncontrolled tire stockpile and may issue an administrative order directing the responsible party or parties to mitigate or eliminate the threatening or hazardous conditions posed by the uncontrolled tire stockpile. [1995, c. 579, §2 (NEW).]

An administrative order issued under this section must contain findings of fact describing, insofar as possible, and with reasonable specificity, the site of the activity and the danger to public health or safety or to the environment. [1995, c. 579, §2 (NEW).]

Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure. [2005, c. 330, §31 (AMD).]

The person to whom the order is directed shall comply immediately. That person may apply to the board for a hearing within 10 working days after receipt of the order. Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing before the board is an appeal. At the hearing, all witnesses must be sworn, and the department shall first establish the basis for the administrative order and for naming the person to whom the administrative order was directed. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7. [2005, c. 330, §31 (AMD).]

The Office of the State Fire Marshal may employ its enforcement powers as authorized in Title 25, section 2396 to require a responsible party or parties to take any action necessary to protect public health and safety from substantial and immediate fire danger posed by an uncontrolled tire stockpile. [1995, c. 314, §2 (NEW).]

### SECTION HISTORY

1991, c. 517, §A2 (NEW). 1995, c. 314, §2 (AMD). 1995, c. 579, §2 (AMD). 2005, c. 330, §31 (AMD).

## §1316-B. ABATEMENT; CLEANUP; MITIGATION

If a responsible party does not comply immediately with all conditions of an administrative order issued pursuant to section 1316-A or an administrative consent agreement issued pursuant to section 347-A, subsection 4 or any court order, the commissioner may act to abate, clean up or mitigate the threat or hazard posed by an uncontrolled tire stockpile. The commissioner may: [1995, c. 579, §3 (AMD).]

**1. Assistance.** Employ private consultants and other persons to evaluate, design or conduct tire removal or site remediation activities;

[ 1991, c. 517, Pt. A, §2 (NEW) .]

**2. Process and remove.** Cause the processing or removal of all stockpiled tires;

[ 1995, c. 579, §4 (AMD) .]

**3. Secure.** Have barriers constructed and sufficient security measures implemented to prohibit the access of unauthorized persons to the site, including the responsible party;

[ 1991, c. 517, Pt. A, §2 (NEW) .]

**4. Equipment.** Have fire-fighting or pollution abatement equipment purchased and stored either at or away from the tire stockpile;

[ 1991, c. 517, Pt. A, §2 (NEW) .]

**5. Alter.** Have the physical characteristics of the stockpile site altered, including the construction of fire lanes, fire or pollution barriers or other necessary site remediation activity;

[ 1995, c. 314, §3 (AMD) .]

**6. Close.** Permanently close the stockpile and prohibit the use of the site for the storage or disposal of used motor vehicle tires; or

[ 1995, c. 314, §3 (AMD) .]

**7. Consultation.** Consult with the Office of the State Fire Marshal regarding on-site fire abatement and control measures.

[ 1995, c. 314, §4 (NEW) .]

#### SECTION HISTORY

1991, c. 517, §A2 (NEW). 1995, c. 314, §§3,4 (AMD). 1995, c. 579, §§3,4 (AMD).

### §1316-C. LIABILITY; RECOVERY BY STATE

Each responsible party is jointly and severally liable for all costs incurred by the State, including court costs and attorney's fees, for the abatement, cleanup or mitigation of the threat or hazard posed by an uncontrolled tire stockpile and for damages for injury to, destruction of, loss of or loss of use of natural resources of the State resulting from the uncontrolled tire stockpile, including the reasonable costs of assessing natural resources damages. The commissioner shall demand prompt reimbursement of all costs incurred under sections 1316-A and 1316-B. If payment is not received by the State within 30 days of demand, the Attorney General may file suit in the Superior Court and may seek reimbursement of other costs and any other relief provided by law. Notwithstanding the time limits stated in this section, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability. [2007, c. 655, §11 (AMD) .]

The commissioner may not demand from responsible parties that are municipalities reimbursement of more than 10% of all costs incurred by the State under sections 1316-A and 1316-B. [1991, c. 517, Pt. A, §2 (NEW) .]

In any suit filed under this section, the State need not prove negligence in any form or matter by a defendant. The State need only prove that a defendant is a responsible party and the site poses or posed or potentially poses or posed a threat or hazard to the health, safety or welfare of any citizen of the State or the environment of the State, to which the acts or omissions of the defendant are or were causally related.



Punitive damages may be awarded by the court upon a finding that a responsible party acted in willful violation of law, rule or order in creating, increasing or maintaining an uncontrolled tire stockpile. [1991, c. 517, Pt. A, §2 (NEW).]

Funds recovered under this section must be deposited into the Tire Management Fund. [1995, c. 465, Pt. A, §23 (AMD); 1995, c. 465, Pt. C, §2 (AFF).]

#### SECTION HISTORY

1991, c. 517, §A2 (NEW). 1995, c. 465, §A23 (AMD). 1995, c. 465, §C2 (AFF). 2007, c. 655, §11 (AMD).

### §1316-D. IMMUNITY

Notwithstanding Title 14, chapter 741, the State, its agencies or its employees are not liable for the death or injury of any person or for any property damage that results from abatement activities pursuant to this subchapter. This section does not affect the right of any person to receive workers' compensation or other applicable benefits. [1991, c. 517, Pt. A, §2 (NEW).]

#### SECTION HISTORY

1991, c. 517, §A2 (NEW).

### §1316-E. LIEN ESTABLISHED

**1. Establishment.** All costs incurred by the State, including court costs and attorney's fees, for the abatement, cleanup or mitigation of an uncontrolled tire stockpile and all related interest and penalties constitute a lien against the real estate of the responsible party or parties.

[ 1991, c. 517, Pt. A, §2 (NEW) .]

**2. Priority.** The priority of a lien filed pursuant to this section is governed by the following.

A. Any lien filed pursuant to this section on real estate where an uncontrolled tire stockpile is located has precedence over all encumbrances on the real estate recorded after the effective date of this section. For the purposes of this paragraph, the term "real estate" includes all real estate of a responsible party that has been included in the property description of the real estate on which the stockpile is located within the 3-year period preceding the date of the filing of the lien or the period between the effective date of this section and the date on which the lien is filed, whichever period is shorter. [1991, c. 517, Pt. A, §2 (NEW).]

B. Any lien filed pursuant to this section on any other real estate of the responsible party has precedence over all transfers and encumbrances filed after the date that the lien is filed with the registry of deeds. [1991, c. 517, Pt. A, §2 (NEW).]

[ 1991, c. 517, Pt. A, §2 (NEW) .]

**3. Notice.** A certificate of lien signed by the commissioner must be mailed by certified mail, return receipt requested, to all persons of record holding an interest in the real estate over which the commissioner's lien is entitled to priority under subsection 2, paragraph A. A certificate may be filed for record in the office of the clerk of any municipality in which the real estate is situated.

[ 1991, c. 517, Pt. A, §2 (NEW) .]

**4. Recording.** Any lien filed pursuant to this section is effective when filed with the registry of deeds for the county in which the real estate is located. The lien must include a description of the real estate, the amount of the lien and the name of the owner as grantor.

[ 1991, c. 517, Pt. A, §2 (NEW) .]

**5. Limitation.** This section does not apply to a unit of real estate that consists primarily of real estate used or under construction as single or multifamily housing at the time the lien is recorded or to property owned by a municipality.

[ 1991, c. 517, Pt. A, §2 (NEW) .]

**6. Discharge of lien.** When the amount of a lien recorded under this section has been paid or reduced, the commissioner, upon request by any person of record holding interest in the real estate that is the subject of the lien, shall issue a certificate discharging or partially discharging the lien. The certificate must be recorded in the registry in which the lien was recorded. Any foreclosure action on the lien must be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the property subject to the lien is situated.

[ 1991, c. 517, Pt. A, §2 (NEW) .]

#### SECTION HISTORY

1991, c. 517, §A2 (NEW).

### §1316-F. TIRE MANAGEMENT FUND

The Tire Management Fund is created within the department as a nonlapsing dedicated fund to pay the costs of tire stockpile abatement, remediation and cleanup. All funds appropriated or allocated to the fund must be deposited in the fund and the fund may accept grants, bequests, gifts or contributions from any person, corporation or governmental entity. The fund must be used for the purposes set forth in section 1316-B. Permissible uses include providing financial incentives to tire processors to make the processing of tires economically feasible. The department shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters by March 1, 1996 on how the funds have been spent. [1995, c. 465, Pt. A, §24 (NEW); 1995, c. 465, Pt. C, §2 (AFF).]

#### SECTION HISTORY

1995, c. 465, §A24 (NEW). 1995, c. 465, §C2 (AFF).

### §1316-G. TIRE STOCKPILE ABATEMENT PROGRAM

The State shall undertake a program to eliminate tire stockpiles. The program is under the direction of the department with assistance from other agencies including the Department of the Attorney General, the Maine State Police, the Maine National Guard and the Department of Corrections. [2011, c. 655, Pt. GG, §16 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

**1. Tire stockpile abatement.** The department shall, as available resources allow:

A. Estimate the number of tires that are stockpiled and that pose a significant risk to the environment or public health; [1995, c. 578, §1 (NEW).]

B. Develop a tire stockpile reduction priority plan based on environmental and public health risks; [1995, c. 578, §1 (NEW).]

C. Seek the cooperation and assistance of private and governmental landowners or tire stockpile operators to reduce the size and number of tire stockpiles; [1995, c. 578, §1 (NEW).]

D. Assist tire stockpile owners and operators willing to cooperate within the law; [1995, c. 578, §1 (NEW).]

E. Utilize enforcement powers unilaterally or in conjunction with the Department of the Attorney General or the Maine State Police or other parties to abate health, safety and environmental risks posed by tire stockpiles when voluntary cooperation is not provided by landowners or operators; [1995, c. 578, §1 (NEW).]

F. Develop or cause to be developed site-specific tire stockpile abatement plans; [1995, c. 578, §1 (NEW).]

G. Give preference in implementing site-specific tire stockpile abatement activities to the processing of tires for removal and beneficial use while mitigating fire risk; [1995, c. 578, §1 (NEW).]

H. Educate the public and encourage use of tires based on consideration of environmental and public health impacts as well as market conditions; and [2007, c. 655, §12 (AMD).]

I. Contract for services to reduce tire stockpiles and abate significant risk to the environment and public health at tire stockpile sites. [2007, c. 655, §13 (AMD).]

J. [2007, c. 655, §14 (RP).]

[ 2007, c. 655, §§12-14 (AMD) .]

**2. Market development.** The department shall, as available resources allow, assist with market development to encourage the beneficial reuse of whole tires and processed tires inside or outside the State. The department may also make recommendations to the Legislature regarding legislation that would enhance the beneficial reuse of waste tires or processed tires.

[ 2011, c. 655, Pt. GG, §17 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**3. Business retention and new technology.** The Department of Economic and Community Development, as available resources allow, shall lead a cooperative effort involving the department and the Finance Authority of Maine to identify measures the State can take to provide a favorable environment for the retention of businesses assisting in the processing of waste tires. This cooperative effort must also provide for the introduction of viable new technologies to cost-effectively convert waste tires to commodities that can be utilized for beneficial reuse and for energy production.

[ 2011, c. 655, Pt. GG, §17 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

#### SECTION HISTORY

1995, c. 578, §1 (NEW). 2007, c. 655, §§12-14 (AMD). 2011, c. 655, Pt. GG, §§16, 17 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

## Subchapter 2-B: MANAGEMENT OF MOTOR VEHICLE TIRES

### §1316-L. MANAGEMENT OF MOTOR VEHICLE TIRES

**1. Disposal, storage and processing.** A person may not dispose of, store or process, or cause to be disposed of, stored or processed, used motor vehicle tires at a site or facility in this State that:

A. Is an uncontrolled tire stockpile that is the subject of an administrative order of the commissioner pursuant to section 1316-A; or [1995, c. 579, §5 (NEW).]

B. Is unlicensed, unless the facility is exempt from licensing or otherwise authorized under state law to dispose of, store or process such tires. [1995, c. 579, §5 (NEW).]

[ 1995, c. 579, §5 (NEW) .]

**2. Transfer to tire transporter.** A person may not transfer custody or possession of scrap tires to any transporter if that person knows or has reason to believe the transporter:

- A. Does not have a license or permit to transport scrap tires as required by department rules; [1995, c. 579, §5 (NEW).]
- B. Does not have a manifest documenting the transport of such tires as required by department rules; or [1995, c. 579, §5 (NEW).]
- C. Will transport or handle the scrap tires in violation of this subchapter or of subchapter II-A or rules adopted pursuant to section 1304. [1995, c. 579, §5 (NEW).]

[1995, c. 579, §5 (NEW).]

The department shall maintain current lists of uncontrolled tire stockpiles, licensed and authorized tire storage, disposal or processing facilities and transporters licensed or authorized to transport scrap tires. [1995, c. 579, §5 (NEW).]

#### SECTION HISTORY

1995, c. 579, §5 (NEW).

## §1316-M. TRANSPORTATION OF TIRES

**1. Examination of license and manifest.** A state, county or local law enforcement officer may examine a nonhazardous waste transporter license to determine if it is valid, or a nonhazardous waste manifest to determine whether scrap tires are being transported to a licensed or exempt waste facility.

[1995, c. 579, §5 (NEW).]

**2. Impoundment.** When a law enforcement officer has reasonable grounds to believe that scrap tires are being transported to an unlicensed, nonexempt waste facility, or that scrap tires are being transported to a waste facility without a manifest or license as required by the department's nonhazardous waste transporter rules, the law enforcement officer may impound the vehicle and hold the vehicle until the transporter has fully complied with department rules.

[1995, c. 579, §5 (NEW).]

**3. Alternative manifest.** A law enforcement officer may issue an alternative manifest to the transporter to transport scrap tires to a licensed waste facility. An alternative manifest must include the following information:

- A. The name and location of the waste generator; [1995, c. 579, §5 (NEW).]
- B. The quantity of scrap tires; and [1995, c. 579, §5 (NEW).]
- C. The name and location of the waste facility to which the scrap tires are being transported. [1995, c. 579, §5 (NEW).]

A copy of the alternative manifest prepared by the law enforcement officer and any summons issued to the transporter must be sent to the department.

[1995, c. 579, §5 (NEW).]

**4. Transporting without license or manifest; penalties.** A person who transports scrap tires without a license or without a manifest as required by department rules commits a Class E crime. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. The minimum fines for transporting scrap tires without a license or without a manifest are as follows:

A. For a vehicle with a registered gross weight of up to 12,000 pounds, \$500; [ 2003, c. 452, Pt. W, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF). ]

B. For a vehicle with a registered gross weight of between 12,001 and 34,000 pounds, \$2,000; and [ 2003, c. 452, Pt. W, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF). ]

C. For a vehicle with a registered gross weight of over 34,000 pounds, \$4,500. [ 2003, c. 452, Pt. W, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF). ]

This minimum fine may not be suspended, but it may be reduced by the amount of the disposal fee paid by the transporter for disposal of the truckload of tires at a licensed waste facility. Notwithstanding Title 17-A, section 1301, the maximum fine under this subsection is not more than \$10,000 per violation.

[ 2003, c. 452, Pt. W, §10 (AMD); 2003, c. 452, Pt. X, §2 (AFF) . ]

**5. Transporting after summons or arrest.** A person who, after being issued a summons or arrested for a violation of the license or manifest requirements, transports the scrap tires to an unlicensed, nonexempt waste facility commits a Class D crime. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. Notwithstanding Title 17-A, section 1301, the maximum fine under this subsection is not more than \$25,000 per violation.

[ 2003, c. 452, Pt. W, §11 (NEW); 2003, c. 452, Pt. X, §2 (AFF) . ]

#### SECTION HISTORY

1995, c. 579, §5 (NEW). 2003, c. 452, §§W10,11 (AMD). 2003, c. 452, §X2 (AFF) .

## Subchapter 2-C: DANGEROUS OR UNSAFE MATERIAL CONTROL

### §1316-O. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [ 2005, c. 406, §1 (NEW). ]

**1. Dangerous or unsafe material.** "Dangerous or unsafe material" means any substance or material that is capable of or likely to cause injury, including, but not limited to:

A. Pressure tanks such as propane tanks; [ 2005, c. 406, §1 (NEW). ]

B. Flammable liquids or solids; and [ 2005, c. 406, §1 (NEW). ]

C. Explosive materials such as dynamite or fireworks. [ 2005, c. 406, §1 (NEW). ]

[ 2005, c. 406, §1 (NEW) . ]

#### SECTION HISTORY

2005, c. 406, §1 (NEW).

### §1316-P. PROHIBITION; PENALTIES

A person commits a civil violation for which a fine of not more than \$500 may be assessed if, with respect to any dangerous or unsafe material that the person knows is dangerous or unsafe, that person knowingly: [ 2005, c. 406, §1 (NEW). ]

**1. Conceals.** Conceals that material by placing it inside other waste material or covering it with other waste material; and

[ 2005, c. 406, §1 (NEW) . ]

**2. Disposes at solid waste facility.** Disposes or causes another to dispose of such material in a solid waste facility.

[ 2005, c. 406, §1 (NEW) .]

#### SECTION HISTORY

2005, c. 406, §1 (NEW).

### Subchapter 3: HAZARDOUS MATTER CONTROL

## §1317. DEFINITIONS

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1979, c. 730, §2 (NEW).]

**1. Discharge.** "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, disposing, emptying or dumping onto the land or into the water or ambient air.

[ 1979, c. 730, §2 (NEW) .]

**2. Hazardous matter.** "Hazardous matter" means substances identified by the board under section 1319 that present a present or potential danger to the people of the State or to its natural environment when deposited on land or discharged on or into waters of the State or ambient air.

[ 1979, c. 730, §2 (NEW) .]

**3. Remove or removal.** "Remove" or "removal" means the mitigation of the danger created by hazardous matter by either:

A. Treatment or cleanup of a discharge of hazardous matter; or [1979, c. 730, §2 (NEW).]

B. Any action necessary to prevent or minimize danger from a discharge or threatened discharge.

[1979, c. 730, §2 (NEW).]

[ 1979, c. 730, §2 (NEW) .]

**4. Responsible party.** "Responsible party" means the person having care, custody, possession or control of hazardous matter.

[ 1979, c. 730, §2 (NEW) .]

#### SECTION HISTORY

1979, c. 730, §2 (NEW).

## §1317-A. DISCHARGE PROHIBITED

The discharge of hazardous matter into or upon any waters of the State, or into or upon any land within the State's territorial boundaries or into the ambient air is prohibited unless licensed or authorized under state or federal law. For purposes of this section, the discharge of gaseous hazardous matter into the ambient air includes discharges within buildings or structures from sources that are not encapsulated within secondary containment. The discharge must be reported and removed as provided under section 1318-B, subsections 1 and 3. [2005, c. 330, §32 (AMD).]

#### SECTION HISTORY

1979, c. 730, §2 (NEW). 1991, c. 499, §22 (AMD). 2005, c. 330, §32 (AMD).

## §1318. MITIGATION OF PENALTIES

**1. Reporting.** The immediate reporting of a discharge or threatened discharge by the responsible party or by the person causing the discharge may be considered in mitigation of any criminal or civil penalties assessed under this subchapter.

[ 1979, c. 730, §2 (NEW) .]

**2. Removal.** If the responsible party or person causing the discharge immediately reports and removes the discharge in accordance with this subchapter, a plan submitted under section 1318-C and the rules and orders of the board or commissioner, the party or person is not subject to criminal or civil penalties under this subchapter.

[ 1991, c. 208, §1 (AMD) .]

### SECTION HISTORY

1979, c. 730, §2 (NEW). 1989, c. 890, §§A40,B253 (AMD). 1991, c. 208, §1 (AMD).

## §1318-A. RECOVERY BY STATE, COUNTIES AND MUNICIPALITIES FOR EXPENDITURES FOR REMOVAL OF DISCHARGES

**1. Responsible party.** The responsible party or the person causing the discharge is liable for all acts and omissions of its servants and agents that are committed within the course and scope of their employment.

[ 2005, c. 100, §1 (AMD) .]

**2. State, counties and municipalities to recover for expenditures for removal.** Any person who permits, causes or is responsible for a prohibited discharge shall reimburse the State, counties and municipalities for all costs incurred, including personnel costs, in removing the discharge, including costs for ensuring public safety. Funds recovered under this section must be deposited to the account from which they were expended. Requests from the State for reimbursement, if not paid within 30 days of demand, may be turned over to the Attorney General for collection or may be submitted to a collection agency or agent or an attorney retained by the department with the approval of the Attorney General pursuant to Title 5, section 191, or, for county or municipal cost, to the District Attorney for collection.

[ 2005, c. 100, §1 (AMD) .]

In any suit to enforce claims of the State, a county or a municipality under this section, it is not necessary for the State, county or municipality to plead or prove negligence in any form or manner on the part of the person causing, permitting or responsible for the discharge. The State, county or municipality need only plead and prove the fact of the prohibited discharge and that the discharge occurred while the hazardous matter was in the custody or control of the person causing, permitting or responsible for the discharge. [ 2005, c. 100, §1 (AMD) .]

At the request of one or more municipalities, a county may bring legal action for recovery under this section on behalf of the municipality or municipalities. If the county is successful in the action, the county is entitled to recover the cost of the action and reasonable attorney's fees. [ 2005, c. 100, §1 (NEW) .]

### SECTION HISTORY

1979, c. 730, §2 (NEW). 1989, c. 317, §1 (AMD). 1991, c. 817, §33 (AMD). 2005, c. 100, §1 (AMD).

## §1318-B. PROCEDURES FOR REMOVAL OF DISCHARGES OF HAZARDOUS MATTER

**1. Reporting.** Except as provided in this subsection, the responsible party or person causing the discharge shall report a discharge immediately to the Department of Public Safety, which shall immediately notify the Commissioner of Environmental Protection and the public safety agency of the municipality in which the discharge takes place. Upon submission to the commissioner of a written spill prevention control and clean-up plan that meets the criteria of section 1318-C, subsection 1, a discharge containing a hazardous matter that is covered by the plan must be reported only if the discharge equals or exceeds the applicable reportable quantity for that particular hazardous matter as specified in Code of Federal Regulations, Title 40, Parts 302.4, 302.5 and 302.6 (b)(1), revised as of July 1, 2002, or when the discharge extends or spreads beyond the area on the site covered by the spill prevention control and clean-up plan.

[ 2005, c. 330, §33 (AMD) .]

**2. Preservation of public order.** The local public safety agency shall exercise authority for preservation of public order and safety, shall coordinate the response to the spill and shall be reimbursed under section 1318-A. The Department of Public Safety shall exercise this authority in those areas of the State without a local public safety agency, or in any situation in which a local public safety agency requests assistance from the Department of Public Safety.

[ 1989, c. 317, §2 (AMD) .]

**3. Commissioner of Environmental Protection to direct removal.** The Commissioner of Environmental Protection shall have authority and responsibility to plan, implement and, with the cooperation of the appropriate public safety agency, direct that part of the response to a discharge of hazardous matter that involves removal.

A. The responsible party or person causing the discharge shall immediately undertake removal of the discharge. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §255 (AMD) .]

B. The commissioner may undertake the removal of the discharge and may retain agents and make contracts for this purpose. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §255 (AMD) .]

C. Any unexplained discharge of hazardous matter occurring within state jurisdiction, or on land or in water or air beyond state jurisdiction that for any reason penetrates within state jurisdiction, must be removed by or under the direction of the commissioner. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §255 (AMD) .]

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §255 (AMD) .]

**4. Limited liability for responders.** A person who voluntarily, without expectation of monetary or other compensation, assists or advises the commissioner in mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous matter is not liable for removal costs, damages, injuries, civil liabilities or penalties that result from actions taken or omitted in the course of rendering assistance or advice in accordance with the directions of the commissioner. This liability limitation does not apply:

A. If the person is grossly negligent or engages in willful misconduct; or [1995, c. 642, §11 (NEW) .]



B. To a person who caused the discharge or threatened discharge or otherwise is determined to be a responsible party. [1995, c. 642, §11 (NEW).]

[ 1995, c. 642, §11 (NEW) .]

#### SECTION HISTORY

1979, c. 730, §2 (NEW). 1981, c. 184, §§1,2 (AMD). 1989, c. 317, §2 (AMD). 1989, c. 890, §§A40,B254, 255 (AMD). 1991, c. 208, §2 (AMD). 1995, c. 642, §§10,11 (AMD). 1997, c. 364, §39 (AMD). 2005, c. 330, §33 (AMD).

### **§1318-C. SPILL PREVENTION CONTROL AND CLEAN-UP PLAN**

A responsible party may develop and submit to the commissioner spill prevention, control and clean-up plans referred to in this section as "the plan" to address discharges of hazardous matter. [1991, c. 208, §3 (NEW).]

**1. Plan content.** Spill prevention control and clean-up plans must include at a minimum the following information:

- A. The hazardous matter and substances covered including the reportable quantity for each hazardous matter and mixture measured in pounds if a solid and in pounds and gallons if a liquid; [1993, c. 355, §53 (AMD).]
- B. Any containment and diversionary structures or equipment where appropriate; [1991, c. 208, §3 (NEW).]
- C. Inspection, maintenance and testing procedures for storage and containment areas; [1991, c. 208, §3 (NEW).]
- D. A list of emergency response equipment and locations and a description of the capabilities of the equipment; [1991, c. 208, §3 (NEW).]
- E. A description of employee training programs; [1991, c. 208, §3 (NEW).]
- F. A description of areas in need of protection and method of protection; [1991, c. 208, §3 (NEW).]
- G. A description of discharge detection devices and emergency warning systems; [1991, c. 208, §3 (NEW).]
- H. A list of on-site emergency coordinators and the qualifications of on-site trained employee responders; [1991, c. 208, §3 (NEW).]
- I. A description of evacuation procedures and assembly points; [1991, c. 208, §3 (NEW).]
- J. Notification procedures for federal, state and local officials; [1991, c. 208, §3 (NEW).]
- K. Procedures for supplying written reports to the department; [1991, c. 208, §3 (NEW).]
- L. General response and clean-up protocols by substance or substance class; [1991, c. 208, §3 (NEW).]
- M. Specific on-site containment, treatment or removal plans; [1991, c. 208, §3 (NEW).]
- N. A description of the record-keeping process for responses involving the implementation of this plan; [1991, c. 208, §3 (NEW).]
- O. A description and copies of mutual aid agreements and any agreements with clean-up contractors; and [1991, c. 208, §3 (NEW).]
- P. A promulgation statement and date of plan adoption. [1991, c. 208, §3 (NEW).]

[ 1993, c. 355, §53 (AMD) .]

**2. Submission.** The plan and all amendments to the plan must be submitted to the commissioner upon adoption or amendment.

[ 1991, c. 208, §3 (NEW) .]

**3. Amendments.** The plan must be amended as necessary to reflect current conditions at the facility or as determined appropriate by the facility or state agencies.

[ 1991, c. 208, §3 (NEW) .]

#### SECTION HISTORY

1991, c. 208, §3 (NEW). 1993, c. 355, §53 (AMD).

## §1319. POWERS OF THE BOARD

### 1. Identification of hazardous matter.

A. Any substance designated as hazardous by the United States Environmental Protection Agency in proposed or final regulations under the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 United States Code, Section 9602, and any substance identified as hazardous waste under section 1319-O may be identified by rule as hazardous matter by the board. [1997, c. 364, §40 (AMD) .]

B. Any substance which has not been so designated by the United States Environmental Protection Agency may be identified by rule as hazardous matter by the board. [1979, c. 730, §2 (NEW) .]

C. Rules adopted under paragraph B shall be submitted to the Joint Standing Committee on Energy and Natural Resources for review. These rules shall become effective after the next regular session of the Legislature only if approved by Joint Resolution. [1979, c. 730, §2 (NEW) .]

[ 1997, c. 364, §40 (AMD) .]

### 2. Rules.

The board shall have authority to adopt rules in order to:

A. Prescribe procedures for reporting discharges prohibited by this subchapter; [1979, c. 730, §2 (NEW) .]

B. Prescribe procedures, methods, means and equipment to be used in the removal of discharges of hazardous matter; and [1979, c. 730, §2 (NEW) .]

C. Exempt types or methods of discharges of hazardous matter from the requirements of this subchapter that the board determines do not present danger, imminent, present or delayed, to the people of the State or to its natural environment. [1999, c. 334, §13 (AMD) .]

[ 1999, c. 334, §13 (AMD) .]

#### SECTION HISTORY

1979, c. 730, §2 (NEW). 1997, c. 364, §40 (AMD). 1999, c. 334, §13 (AMD).

## §1319-A. DUTIES OF THE COMMISSIONER

**1. Facilities.** The commissioner may undertake studies and evaluations necessary to develop suitable waste facilities.

[ 1979, c. 730, §2 (NEW) .]

**2. Training.** The commissioner may train state and local personnel to remove discharges of hazardous matter. Insofar as practical, the commissioner shall rely on existing sources to deliver this training.

[ 1979, c. 730, §2 (NEW) .]

#### SECTION HISTORY

1979, c. 730, §2 (NEW).

## Subchapter 4: MAINE HAZARDOUS WASTE FUND

### §1319-B. FINDINGS AND PURPOSE

The Legislature finds that the proper handling of hazardous waste and protection of the natural environment are important to the public health, safety and welfare. The Legislature also finds that spills and unlicensed discharges of hazardous waste may cause damage to owners and users of property, public and private recreational activities, the natural environment and the general health and safety of citizens of the State. [1981, c. 478, §7 (NEW).]

The Legislature further finds that it is in the public interest of the State and its citizens to provide the capability for prompt and effective response to spills and unlicensed discharges of hazardous waste and that this state's interest overweighs the economic burdens and any burden of strict liability imposed by this subchapter upon those engaged in generating, transporting and handling hazardous waste. [1981, c. 478, §7 (NEW).]

The Legislature further finds that substantial quantities of waste oil are contaminated by hazardous waste and that waste oil, if not properly handled, is a threat to the public health, safety and welfare and to the environment and therefore must be controlled. [1983, c. 342, §5 (NEW).]

#### SECTION HISTORY

1981, c. 478, §7 (NEW). 1983, c. 342, §5 (AMD).

### §1319-C. DEFINITIONS

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1981, c. 478, §7 (NEW).]

**1. Discharge.** "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, disposing, emptying or dumping of hazardous waste onto the land or into the water or ambient air.

[ 1981, c. 478, §7 (NEW) .]

**2. Remove or removal.**

[ 1985, c. 162, §10 (RP) .]

**3. Responsible party.** "Responsible party" means any person who could be held liable under section 1319-J.

[ 2009, c. 501, §15 (NEW) .]

#### SECTION HISTORY

1981, c. 478, §7 (NEW). 1985, c. 162, §10 (AMD). 2009, c. 501, §15 (AMD).

## §1319-D. MAINE HAZARDOUS WASTE FUND

The Maine Hazardous Waste Fund is established to be used by the department as a nonlapsing, revolving fund for carrying out the department's responsibilities under this subchapter and subchapter III. All fees, penalties, interest and other charges under this subchapter must be credited to this fund. This fund must be charged with the expenses of the department related to this subchapter and subchapter III, including costs of removal or abatement of discharges and costs of the inspection or supervision of hazardous waste activities and hazardous waste handlers. [2001, c. 212, §6 (AMD).]

Money in the fund not currently needed to meet the obligations of the department in the exercise of its responsibilities for hazardous waste management shall be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by statute. Interest received on that investment shall be credited to the fund. [1981, c. 478, §7 (NEW).]

The commissioner shall submit budget recommendations for disbursements from the fund in accordance with section 1319-E, subsection 1, paragraphs C and E for each biennium. The budget must be submitted as part of the unified current services budget legislation in accordance with Title 5, sections 1663 to 1666. The State Controller shall authorize expenditures therefrom as approved by the commissioner. Expenditures pursuant to section 1319-E, subsection 1, paragraphs A and D may be made as authorized by the State Controller following approval by the commissioner. [1997, c. 424, Pt. B, §10 (AMD).]

### SECTION HISTORY

1981, c. 478, §7 (NEW). 1985, c. 162, §11 (AMD). 1987, c. 750, §4 (AMD). 1989, c. 546, §14 (AMD). 1989, c. 890, §§A40,B256 (AMD). 1997, c. 424, §B10 (AMD). 2001, c. 212, §6 (AMD).

## §1319-E. DISBURSEMENTS FROM THE MAINE HAZARDOUS WASTE FUND

**1. Money disbursed.** Money in the Maine Hazardous Waste Fund may be disbursed by the commissioner for the following purposes, but for no other:

A. Costs incurred in the removal or abatement of an unlicensed discharge or threatened discharge of hazardous waste, waste oil or biomedical waste. Whenever practical, the commissioner may offer the responsible party the opportunity to remove or abate the discharge or threatened discharge; [1993, c. 355, §54 (AMD).]

B. [1989, c. 546, §15 (RP).]

C. Costs incurred for the purchase of necessary hazardous waste, waste oil and biomedical waste testing, response, inspection and monitoring equipment and supplies, response and compliance personnel and training of personnel in accordance with an allocation approved by the Legislature; [1993, c. 355, §54 (AMD).]

D. Amounts necessary to reimburse municipalities as required by section 1319-R, subsection 3; [1989, c. 874, §8 (AMD).]

E. Costs incurred in the inspection or supervision of hazardous waste, waste oil and biomedical waste activities and handlers; and [2011, c. 653, §26 (AMD); 2011, c. 653, §33 (AFF).]

F. [2011, c. 653, §33 (AFF); 2011, c. 653, §27 (RP).]

G. Costs incurred in the administration of chapter 27 or the provision of technical assistance under the technical assistance and recognition programs described in section 2326. [2009, c. 579, Pt. B, §10 (AMD); 2009, c. 579, Pt. B, §13 (AFF).]

[2009, c. 579, Pt. B, §10 (AMD); 2009, c. 579, Pt. B, §13 (AFF); 2011, c. 653, §§26, 27 (AMD); 2011, c. 653, §33 (AFF).]

## 2. Limitation.

[ 1987, c. 192, §28 (RP) .]

### SECTION HISTORY

1981, c. 478, §7 (NEW). 1983, c. 342, §6 (AMD). 1985, c. 162, §12 (AMD). 1987, c. 192, §28 (AMD). 1987, c. 517, §26 (AMD). 1989, c. 546, §15 (AMD). 1989, c. 874, §§8-10 (AMD). 1989, c. 890, §§A40, B257 (AMD). 1991, c. 499, §23 (AMD). 1993, c. 355, §54 (AMD). 2009, c. 579, Pt. B, §10 (AMD). 2009, c. 579, Pt. B, §13 (AFF). 2011, c. 653, §§26, 27 (AMD). 2011, c. 653, §33 (AFF).

## §1319-F. PERSONNEL AND EQUIPMENT

The commissioner may employ personnel, subject to the Personnel Laws, and maintain equipment necessary to carry out the department's responsibilities under this subchapter. [1981, c. 478, §7 (NEW) .]

### SECTION HISTORY

1981, c. 478, §7 (NEW).

## §1319-G. REIMBURSEMENT TO THE FUND

**1. Recovery.** The commissioner shall seek recovery to the use of the Maine Hazardous Waste Fund of all sums expended from the fund, including overdrafts, for disbursements made from the fund under section 1319-E, subsection 1, paragraphs A, B and C, including interest computed at 15% a year from the date of expenditure, unless the commissioner finds the amount too small or the likelihood of recovery too uncertain. Requests by the department for reimbursement to the Maine Hazardous Waste Fund, if not paid within 30 days of demand, may be turned over to the Attorney General for collection or may be submitted to a collection agency or agent or an attorney retained by the department with the approval of the Attorney General pursuant to Title 5, section 191.

The commissioner may file a claim with or otherwise seek money from federal agencies to recover to the use of the fund all disbursements from the fund.

[ 2007, c. 655, §15 (AMD) .]

**1-A. Lien.** All costs incurred by the State in the removal, abatement and remediation of an unlicensed discharge or threatened discharge of hazardous waste, waste oil or biomedical waste under this subchapter and interest are a lien against the real estate of the responsible party.

A certificate of lien signed by the commissioner must be sent by certified mail to the responsible party prior to being recorded and may be filed in the office of the clerk of the municipality in which the real estate is located. The lien is effective when the certificate is recorded with the registry of deeds for the county in which the real estate is located. The certificate of lien must include a description of the real estate, the amount of the lien and the name of the owner as grantor.

When the amount for which a lien has been recorded under this subsection has been paid or reduced, the commissioner, upon request by any person of record holding interest in the real estate that is the subject of the lien, shall issue a certificate discharging or partially discharging the lien. The certificate must be recorded in the registry in which the lien was recorded. Any action of foreclosure of the lien must be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the real estate subject to the lien is located.

[ 2009, c. 501, §16 (NEW) .]

**2. Waiver of reimbursement.** Upon petition of any person who has paid into the fund, the board, after opportunity for a hearing, may waive the right to reimbursement to the fund if it finds that the incident was the result of:

- A. An act of war; [1981, c. 478, §7 (NEW).]
- B. An act of government, either state, federal or municipal, except insofar as the act was pursuant to section 1319-E; and [1981, c. 478, §7 (NEW).]
- C. An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency. [1981, c. 478, §7 (NEW).]

[ 1981, c. 478, §7 (NEW) .]

**3. Waiver of reimbursement for registered used oil collection centers.** Upon petition of the owner or operator of a registered used oil collection center, the commissioner may waive the right to reimbursement to the fund of costs incurred in the removal or abatement of up to 660 gallons of hazardous waste from that collection center if the commissioner finds that:

- A. The registered used oil collection center is in compliance with the requirements contained in section 1319-Y and any rules adopted pursuant to section 1319-O, subsection 2, paragraph B; [1995, c. 573, §3 (NEW).]
- B. The owner or operator of the registered used oil collection center:
  - (1) Did not mix the oil with hazardous waste; and
  - (2) Did not knowingly accept hazardous waste or oil mixed with hazardous waste; and [1995, c. 573, §3 (NEW).]
- C. The commissioner has not granted any previous waivers of reimbursement for costs incurred in the removal or abatement of hazardous waste from the same registered used oil collection center pursuant to this subsection during the previous 12 months. [1995, c. 573, §3 (NEW).]

Notwithstanding this subsection, the commissioner may not grant waivers of reimbursement to the fund pursuant to this subsection that total more than \$10,000 in any one fiscal year.

[ 1995, c. 573, §3 (NEW) .]

#### SECTION HISTORY

1981, c. 478, §7 (NEW). 1989, c. 890, §§A40,B258 (AMD). 1991, c. 817, §34 (AMD). 1995, c. 573, §3 (AMD). 2007, c. 655, §15 (AMD). 2009, c. 501, §16 (AMD).

## §1319-H. APPLICATION AND ANNUAL FEES

**1. Fees for reviewing applications.** The following fees are required for reviewing applications.

A. Any person who applies for a license for a hazardous waste facility shall pay the appropriate fee. An application for a license will not be considered complete and will not be processed until this fee is received. Application fees are as follows.

- (1) Disposal facility..... \$10,000
- (2) Commercial treatment facility.....7,000
- (3) On-site treatment facility.....4,000
- (4) Other waste facility for hazardous waste, including storage facilities ....2,500
- (5) Waste oil storage facility.....2,500

(6) Treatment facility under license by rule provisions where the hazardous waste treated is 1,000 kilograms or less per calendar month.....75

(7) All other facilities for hazardous waste under license by rule provisions.....400

(8) Facility post-closure license.....2,000 [1989, c. 878, Pt. H, §9 (AMD).]

B. A refund of 50% of the fee shall be returned to an applicant who withdraws his application within 30 days of its submission. [1981, c. 478, §7 (NEW).]

C. The application fees established by this section are required for an initial application and for any substantial modification to the facility or to the license. The fee is not required for renewal applications or for an application to allow a change of ownership or operator, where, in such cases, no substantial change to the facility or license is sought. [1981, c. 478, §7 (NEW).]

[ 1989, c. 878, Pt. H, §9 (AMD) .]

**2. Annual fees.** Licensed hazardous waste facilities are subject to the following annual fees.

A. Disposal facility ..... \$1,500 [1981, c. 478, §7 (NEW).]

B. Commercial treatment facility and on-site treatment facility ..... 1,000 [1981, c. 478, §7 (NEW).]

C. Other waste facilities for hazardous waste, including storage facilities .....500 [1987, c. 787, §18 (AMD).]

D. Waste oil storage facility .....500 [1983, c. 342, §8 (NEW).]

E. Treatment facility under license by rule provisions where the hazardous waste treated is 1,000 kilograms or less per calendar month.....100 [1987, c. 787, §18 (AMD).]

F. All other facilities for hazardous waste under license by rule provisions.....200 [1987, c. 787, §18 (NEW).]

G. Facility post-closure license.....500 [1989, c. 878, Pt. :H, §10 (NEW).]

[ 1989, c. 878, Pt. H, §10 (AMD) .]

**3. Commercial and on-site treatment facilities.** For the purposes of this section, a commercial treatment facility is a commercial hazardous waste facility which treats hazardous waste. An on-site treatment facility is a licensed hazardous waste treatment facility which uses a noncontinuous treatment process to treat in excess of 1,000 kilograms of hazardous waste in any calendar month.

[ 1981, c. 478, §7 (NEW) .]

#### SECTION HISTORY

1981, c. 478, §7 (NEW). 1983, c. 342, §§7,8 (AMD). 1985, c. 746, §§30,31 (AMD). 1987, c. 787, §§17,18 (AMD). 1989, c. 878, §§H9,10 (AMD).

## §1319-I. FEES

**1. Fees for actions taken on the site of generation.** Any person in the State who generates more than 1,000 kilograms of hazardous waste in any calendar month shall pay a fee as follows:

A. For hazardous waste that is disposed of on the site of generation in a licensed hazardous waste disposal facility, 3¢ a pound; and [2005, c. 549, §1 (AMD).]

B. For hazardous waste which is stored on the site of generation in a licensed hazardous waste storage facility for more than 90 days, but less than 6 calendar months, and for each time period thereafter or 6 calendar months or portion thereof, .5¢ a pound. [1987, c. 491, §25 (RPR).]

[ 2005, c. 549, §1 (AMD) .]

**2. Fees for action taken off site of generation.** Any person who transports hazardous waste in the State shall pay a fee as follows:

A. For hazardous waste that is transported off the site to a licensed hazardous waste disposal facility for disposal, 3¢ a pound; and [2005, c. 549, §2 (AMD) .]

B. For hazardous waste that is transported off the site to a licensed hazardous waste treatment facility for treatment, storage facility for storage or other licensed facility for handling, including beneficial reuse, reclamation or recycling, 3¢ a pound. [2005, c. 549, §3 (AMD) .]

C. [1987, c. 491, §25 (RP) .]

D. [1987, c. 491, §25 (RP) .]

Fees required under this subsection for hazardous waste that is transported off a federally declared Superfund site that was added to the national priorities list by the United States Environmental Protection Agency pursuant to 40 Code of Federal Regulations, Part 300 on or before January 1, 1997 may not exceed \$200,000 per site in any calendar year.

[ 2005, c. 549, §§2, 3 (AMD) .]

**2-A. Fees for noncompliance with reduction requirements.**

[ 2009, c. 579, Pt. B, §13 (AFF); 2009, c. 579, Pt. B, §11 (RP) .]

**3. Fee for transportation into Maine from out of state.** If hazardous waste or waste oil is transported into Maine from out of state, the person who first transports the hazardous waste or waste oil into Maine shall pay the fee indicated by the schedules outlined in subsection 2 for hazardous waste or subsection 4-A for waste oil, as if that person were the waste oil dealer.

[ 2005, c. 549, §4 (AMD) .]

**4. Fee for failure to treat or dispose of hazardous waste within 90 days from arrival.** Any person who owns or operates a hazardous waste treatment or disposal facility and who does not treat or dispose of the hazardous waste within 90 days from the date the hazardous waste arrives at the hazardous waste facility shall pay a fee according to the fee schedule in subsections 1 and 2.

[ 1987, c. 491, §25 (RPR) .]

**4-A. Fee on waste oil sale or disposal.** A fee of 2¢ a gallon on each gallon of waste oil transported, collected or stored must be paid by the waste oil dealer that first transports, collects or stores that waste oil. Waste oil dealers shall maintain records sufficient to determine whether the dealer is liable for any and all fees imposed pursuant to this subsection and shall submit such records to the commissioner as required by rule of the board.

[ 2005, c. 549, §5 (AMD) .]

**4-B. Fee on hazardous materials transported by railroad.** Any person who transports more than 25 tons of certain hazardous materials as specified in this subsection at any one time by rail shall register annually with the commissioner. Fees for the transportation of hazardous materials by rail are imposed on the registrant who first transports the materials in the State by rail. Fees for the transportation of hazardous materials are determined by one of the following methods:



A. Fifteen cents per ton of hazardous materials transported by the registrant during the period of registration paid quarterly by the registrant on the basis of records certified to the commissioner; or [ 2015, c. 2, §29 (COR) . ]

B. Twenty-five thousand dollars paid at the time of registration. [ 2015, c. 2, §29 (COR) . ]

The registrant shall select the method of payment at the time of registration. Fees are paid to the department and upon receipt credited to the Maine Hazardous Waste Fund. A registrant selecting quarterly payments is automatically subject to the \$25,000 annual registration fee if the fee for any quarter has not been paid to the Maine Hazardous Waste Fund within 60 days after the fee becomes due. Hazardous materials subject to the requirements of this subsection are those substances listed in 49 Code of Federal Regulations, Part 172.101, Subpart B, 1994, except that, for purposes of this subsection, "hazardous materials" does not include oil as defined in section 542, subsection 6. The registrant shall make available to the commissioner and the commissioner's authorized representatives all documents relating to the hazardous materials transported by the registrant during the period of registration.

[ 2015, c. 2, §29 (COR) . ]

**5. Time of payment of fees.** Fees required by this section shall be paid according to time schedules established by the commissioner, but not more frequently than quarterly.

[ 1981, c. 478, §7 (NEW) . ]

**6. Penalty for late payment of fee.** In addition to any other liability or penalty imposed by law, any person liable for any fee imposed by this section shall pay 3 times the appropriate fee if the fee has not been paid to the Maine Hazardous Waste Fund within 6 months after the fee becomes due.

[ 1981, c. 478, §7 (NEW) . ]

**7. Fees reduced when fund reaches limit.**

[ 1987, c. 750, §6 (RP) . ]

**8. Limit on fees.** No person may be required to pay, for any calendar year, more than \$15,000 in fees under subsection 1.

[ 1987, c. 491, §25 (RPR) . ]

**9. Hazardous waste subject to fees.** No hazardous waste may be subject to the fees established in this section unless the waste is identified under section 1319-O, subsection 1, provided that waste identified under section 1319-O, subsection 1, paragraph B, shall not be subject to the fees until 90 days after the next regular session of the Legislature.

[ 1987, c. 517, §27 (AMD) . ]

**10. Sunset on certain fees.**

[ 1983, c. 342, §11 (RP); 1983, c. 432, §9 (RP) . ]

**11. Waiver.** The commissioner may waive payment of fees under this section if the commissioner finds the amount involved is too small in relation to the cost of collection.

[ 2001, c. 626, §19 (NEW) . ]

#### SECTION HISTORY

1981, c. 478, §7 (NEW). 1983, c. 342, §§9-11 (AMD). 1983, c. 432, §9 (AMD). 1983, c. 467, §2 (AMD). 1987, c. 491, §25 (AMD). 1987, c. 517, §27 (AMD). 1987, c. 750, §§5,6 (AMD). 1987, c. 787, §19 (AMD). 1989, c. 419, (AMD). 1989, c. 890, §§A40,B259, 260 (AMD). 1989, c. 929, §6 (AMD). 1991, c. 520, §5 (AMD). 1995, c. 642, §12 (AMD). 1997, c. 258, §1 (AMD). 2001, c. 626, §19 (AMD). 2005, c. 549, §§1-5 (AMD). 2009, c. 579, Pt. B, §11 (AMD). 2009, c. 579, Pt. B, §13 (AFF). RR 2015, c. 2, §29 (COR).

## §1319-J. LIABILITY

Any person who permits, causes or is responsible for a discharge or threatened discharge of hazardous waste shall reimburse the State for all costs incurred, including personnel costs, in the removal of the discharge or threatened discharge. Funds recovered under this section shall be deposited to the account from which they were expended. Requests for reimbursement, if not made within 30 days of demand, shall be turned over to the Attorney General for collection. [1981, c. 478, §7 (NEW).]

In any suit to enforce claims of the State under this section, it is not necessary for the State to plead or prove negligence in any form or manner on the part of the person causing, permitting or responsible for the discharge or threatened discharge. The State need only plead and prove the fact of the discharge or threatened discharge and that the discharge or threatened discharge occurred while the hazardous waste was in the custody or control of the person causing, permitting or responsible for the discharge or threatened discharge or that the discharge or threatened discharge occurred at or involved any real property, structure, equipment or conveyance under the custody or control of that person. [1981, c. 478, §7 (NEW).]

### SECTION HISTORY

1981, c. 478, §7 (NEW).

## §1319-K. CONSTRUCTION

This subchapter, being necessary for the general welfare, public health and public safety of the State and its inhabitants, shall be construed to effect the purposes set forth under this subchapter. No rule, regulation or order of the board may be stayed pending appeal under this subchapter. [1981, c. 478, §7 (NEW).]

### SECTION HISTORY

1981, c. 478, §7 (NEW).

## §1319-L. EXEMPTION FOR TREATMENT OF CORROSIVE HAZARDOUS WASTES

**1. Licensing.** A hazardous waste facility license is not required under section 1317-A or 1319-O for elementary neutralization units as defined in department rules for the owner or operator of the facility who complies with requirements of law applicable to elementary neutralization or elementary neutralization units. Requirements of law include waste discharge permits authorizing the discharge of treated waste, permit or other requirements for adoption of a spill prevention plan, and maintenance of collection and treatment equipment.

[ 1995, c. 241, §1 (NEW) .]

**2. Reporting.** Collection and handling of hazardous waste exempt from licensing under subsection 1 is also exempt from the reporting requirement under section 1318, subsection 1 and section 1318-B, subsection 1 provided such wastes are discharged into a contained area, which may include a pipe or sewer.

[ 1995, c. 241, §1 (NEW) . ]

#### SECTION HISTORY

1995, c. 241, §1 (NEW) .

## Subchapter 5: HAZARDOUS WASTE AND WASTE OIL

### §1319-O. RULE-MAKING AUTHORITY; HAZARDOUS WASTE, WASTE OIL AND BIOMEDICAL WASTE

**1. Hazardous waste.** This subsection governs rulemaking for hazardous waste.

A. The commissioner may adopt and amend rules identifying hazardous waste. It is the intent of the Legislature that the commissioner shall identify as hazardous waste those substances that are identified by the United States Environmental Protection Agency in proposed or final regulations. The Legislature also intends that the commissioner may identify as hazardous waste, in accordance with subparagraph (2), other substances in addition to those identified by the United States Environmental Protection Agency. Further, the Legislature intends that a substance that has been identified as a hazardous waste by the commissioner may be removed from identification only by further rulemaking by the commissioner.

Hazardous waste may be identified as follows.

(1) The commissioner may identify any substance as a hazardous waste if that substance is identified as hazardous by particular substance, by characteristic, by chemical class or as a waste product of a specific industrial activity in proposed or final rules of the United States Environmental Protection Agency.

(2) The commissioner may identify any substance as a hazardous waste if the commissioner, after evaluation based on existing data or data reasonably extrapolated from previously conducted studies using similar classes of substances or compounds under similar circumstances, has determined that the substance is an acute or chronic toxin causing significant potential adverse public health or environmental effects. An acute or chronic toxin may include the characteristics of:

- (a) Carcinogenicity;
- (b) Mutagenicity;
- (c) Teratogenicity; or
- (d) Infectiousness.

Rules adopted under this subparagraph must be submitted to the joint standing committee of the Legislature having jurisdiction over natural resources for review.

(3) Whenever the commissioner proposes to adopt or amend rules identifying hazardous waste or removing hazardous waste from identification, the commissioner shall hold a public hearing.

(4) In addition to hazardous waste identified under subparagraphs (1) and (2), the Legislature identifies the following chemicals, materials, substances or waste as being hazardous waste:

- (a) Polychlorinated biphenyls and any substance containing polychlorinated biphenyls.

[ 2015, c. 124, §9 (AMD) . ]

B. The commissioner may adopt rules relating to the handling of hazardous waste, including, but not limited to:

- (1) Containerization and labeling of hazardous waste, consistent with applicable rules of other federal and state agencies;

(2) Reporting of handling of hazardous waste; and

(3) Waste that is not compatible. [ 2015, c. 124, §9 (AMD) . ]

C. The commissioner may adopt rules relating to transportation of hazardous waste, including, but not limited to:

(1) Licensing of transporters of hazardous waste, conveyances used for the transportation of hazardous waste and the operators of these conveyances; and licensing fees must be paid to the Maine Hazardous Waste Fund; and

(2) A manifest system for hazardous waste that takes into consideration the requirements of the United States Resources Conservation and Recovery Act of 1976, Public Law 94-580, as amended, and this subchapter. [ 2015, c. 124, §9 (AMD) . ]

D. The commissioner may adopt rules relating to the interim and final licensing and operation of waste facilities for hazardous waste, including, but not limited to:

(1) Standards for the safe operation and maintenance of the waste facilities, including, but not limited to, record keeping, monitoring before and during operation of the facility and after its termination of use or closure, inspections and contingency plans to minimize potential damage from hazardous waste;

(2) The training of personnel and the certification of supervisory personnel involved in the operation of the waste facilities;

(3) The termination, closing and potential future uses of the waste facilities;

(4) Rules equivalent to regulations of the United States Environmental Protection Agency that provide for licensing or permitting by rule; and

(5) Corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage or disposal facility seeking a permit under this subchapter, regardless of the time waste was placed in the unit. For purposes of this paragraph, "solid waste management unit" includes any waste pile, landfill, surface impoundment or land treatment facility from which hazardous constituents might migrate, regardless of whether the unit was intended for the management of solid or hazardous wastes. [ 2015, c. 124, §9 (AMD) . ]

E. The commissioner may adopt rules relating to evidence of financial capacity of hazardous waste facilities' owners or operators, and of those who transport hazardous waste, to protect public health, safety and welfare and the environment, including, but not limited to:

(1) Liability insurance;

(2) Bonding; and

(3) Financial ability to comply with statutory and regulatory requirements or conditions.

Evidence of financial capacity required by the commissioner may include one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit or qualification as a self-insurer. In establishing the required evidence of financial capacity to further the purposes of this subchapter, the commissioner may specify policy or other contractual terms, conditions or defenses that are necessary or that are unacceptable. [ 2015, c. 124, §9 (AMD) . ]

F. By January 1, 2000, the board shall adopt, at a minimum, the universal waste rules, excluding pesticides, promulgated by the United States Environmental Protection Agency as defined in 40 Code of Federal Regulations, Parts 9, 260, 261, 262, 264, 265, 266, 268, 270 and 273. [ 1999, c. 340, §1 (NEW) . ]

[ 2015, c. 124, §9 (AMD) . ]

**2. Waste oil.** This subsection governs rulemaking for waste oil.

A. The board may adopt rules relating to the transportation, collection and storage of waste oil to protect public health, safety and welfare and the environment. The rules may include, without limitation, rules requiring licenses for waste oil dealers and the location of waste oil storage sites that are operated by waste oil dealers, evidence of financial capability and manifest systems for waste oil. A person licensed by the department to transport or handle hazardous waste is not required to obtain a waste oil dealer's license, but the hazardous waste license must include any terms or conditions determined necessary by the department relating to the transportation or handling of waste oil. [ 2015, c. 124, §9 (AMD) . ]

B. The board may adopt rules relating to the registration, design and operation of used oil collection centers for the purposes of section 1319-Y. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [ 2015, c. 124, §9 (AMD) . ]

[ 2015, c. 124, §9 (AMD) . ]

**3. Handling and disposal of biomedical waste.** The commissioner shall adopt rules relating to the packaging, labeling, handling, storage, collection, transportation, treatment and disposal of biomedical waste, including infectious and pathogenic waste, to protect public health, safety and welfare and the environment.

A. The rules must include, without limitation:

- (1) Registration of biomedical waste generators;
- (2) Handling of biomedical waste by generators;
- (3) Licensing of biomedical waste transporters and the conveyances used for the transportation of biomedical waste;
- (4) Implementation of a biomedical waste tracking or manifest system;
- (5) Establishment of treatment and disposal standards; and
- (6) Categories of biomedical waste subject to regulation under this subsection, consistent with the provisions of section 1303-C, subsection 1-A. [ 1989, c. 124, §3 (NEW); 1989, c. 869, Pt. A, §11 (AMD); 1989, c. 869, Pt. A, §21 (AFF). ]

B. The commissioner shall adopt rules governing the siting, licensing, operational and record-keeping requirements for biomedical waste treatment, storage and disposal facilities. [ 2015, c. 124, §9 (AMD) . ]

C. The commissioner shall require evidence of financial capacity. [ 2015, c. 124, §9 (AMD) . ]

D. The commissioner may assess licensing and registration fees sufficient to pay for the department's administrative costs in regulating biomedical waste. [ 2015, c. 124, §9 (AMD) . ]

E. The rules must provide transportation and disposal options for persons who generate fewer than 50 pounds of sharps per month that allow:

- (1) The generator or an employee of the generator to transport properly packaged sharps to a licensed biomedical waste disposal facility or another medical facility that has volunteered to serve as a collection point for sharps if no more than 50 pounds of sharps are transported in one trip; and
- (2) The generator to mail properly packaged sharps to a licensed biomedical waste disposal facility in this State or a facility in another state if the carrier accepts those items and no more than 50 pounds are transported in any single package.

For purposes of this paragraph, "sharps" means items that may cause puncture wounds or cuts, including hypodermic needles, syringes, scalpel blades, capillary tubes and lancets, and "properly packaged" means packaged in accordance with department rules and rules or requirements imposed by the mail carrier. [1993, c. 529, §1 (NEW).]

[ 2015, c. 124, §9 (AMD) .]

#### SECTION HISTORY

1987, c. 517, §28 (NEW). 1989, c. 124, §§2,3 (AMD). 1989, c. 794, §4 (AMD). 1989, c. 869, §§A10,11,21 (AMD). 1989, c. 890, §§A40,B261 (AMD). 1993, c. 529, §1 (AMD). 1995, c. 573, §§4,5 (AMD). 1997, c. 624, §18 (AMD). 1999, c. 340, §1 (AMD). 2005, c. 549, §6 (AMD). 2015, c. 124, §9 (AMD).

### §1319-P. MUNICIPAL HAZARDOUS WASTE CONTROL

*(REALLOCATED FROM TITLE 38, SECTION 1310-A)*

Nothing in this chapter shall be construed as a preemption of the field of hazardous waste regulation and study on the part of the State. Municipalities may study hazardous waste and adopt and enforce hazardous waste control and abatement ordinances, to the extent that these ordinances are not less stringent than this chapter or than any standard under, or other action promulgated pursuant to, this chapter. Local ordinance provisions which touch on matters not dealt with by the chapter or which are more stringent than this chapter shall bind persons residing in the municipality. [1987, c. 517, §23 (RAL).]

#### SECTION HISTORY

1987, c. 517, §23 (RAL).

### §1319-Q. DATA COLLECTION; REPORT

*(REALLOCATED FROM TITLE 38, SECTION 1304-A)*

**1. Data collection and monitoring.** The commissioner shall have data on the generation, transportation and handling of hazardous waste collected and monitored in a coordinated manner.

[ 2007, c. 1, §21 (COR) .]

**2. Report.** The commissioner shall biennially, prior to November 1st, prepare a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The report must cover the prior 2 calendar years and must include the following data:

- A. The amount of hazardous waste by type that is generated, handled or transported within the State; [1987, c. 517, §13 (RAL).]
- B. The amount of hazardous waste by type that is handled at commercial hazardous waste facilities within the State; [1987, c. 517, §13 (RAL).]
- C. The number of hazardous waste facility permits by type currently active and the number granted and revoked in the year; [1987, c. 517, §13 (RAL).]
- D. The amount of hazardous waste by type generated outside the State that was handled at permitted facilities within the State, and the amount of hazardous waste generated within the State that was handled at facilities located outside the State; [1987, c. 517, §13 (RAL).]
- E. A list of hazardous waste facilities located within the State and those located outside the State which are available for use by generators in the State; and [1987, c. 517, §13 (RAL).]

F. A list of known firms that provide testing, consulting, brokerage, waste exchange, transport or other services to hazardous waste generators. [1987, c. 517, §13 (RAL).]

[ 2007, c. 292, §38 (AMD) .]

### **3. Facility needs plan.**

[ 1993, c. 355, §56 (RP) .]

### **4. Legislative recommendations.**

[ 2007, c. 292, §38 (RP) .]

### **5. Procedural requirements.**

[ 2007, c. 292, §38 (RP) .]

#### **SECTION HISTORY**

1987, c. 517, §13 (RAL). 1989, c. 890, §§A40,B262 (AMD). 1993, c. 355, §§55-57 (AMD). RR 2007, c. 1, §21 (COR). 2007, c. 292, §38 (AMD).

## **§1319-R. FACILITY SITING**

**1. Licenses for hazardous waste facilities.** The department shall issue a license for a hazardous waste facility whenever the department finds that the facility will not pollute any water of the State, contaminate the ambient air, constitute a hazard to health or welfare or create a nuisance. Licenses must be issued under the terms and conditions as the department prescribes and for a term not to exceed 5 years. The department may establish reasonable time schedules for compliance with this subchapter and rules promulgated by the board.

A. The department must find that:

- (1) The applicant presents evidence of sufficient financial capacity, including projections of utilization of the facility by hazardous waste generators, to justify granting the license;
- (2) Issuing the license is consistent with the applicable standards, requirements and procedures of this chapter;
- (3) In the case of a disposal facility, the volume of the waste and the risks related to its handling have been reduced to the maximum practical extent by treatment and volume reduction prior to disposal; and
- (4) If corrective action required by section 1319-V can not be completed by an applicant prior to issuance of a license, the applicant has the financial capacity to undertake and complete the corrective action. [1991, c. 66, Pt. A, §39 (RPR).]

B. The department shall issue an interim license for a waste facility for hazardous waste or shall deem the facility to be so licensed if:

- (1) The waste facility is in existence on April 1, 1980, or the waste facility is in existence on the effective date of statutory or regulatory changes that first render the facility subject to the requirement to have a license under this subchapter;
- (2) The owner or operator has within 60 days of first becoming subject to the license requirements of this subchapter:
  - (a) Notified the commissioner of the location of the facility;
  - (b) Provided a detailed description of the operation of the facility;
  - (c) Identified the hazardous waste that the facility handles; and

- (d) Applied for a license to handle hazardous waste;
- (3) The waste facility is not altered or operated except in accordance with the board's rules;
- (4) The waste facility has a discharge or emission license under section 414 or 591 and the facility is operated in accordance with that license; and
- (5) The facility was not previously denied a noninterim hazardous waste license or an interim license has not expired pursuant to paragraph C, subparagraphs (2) to (6). [1991, c. 66, Pt. A, §39 (RPR).]

C. Interim licenses expire on the earliest of the following dates:

- (1) The date of the final administrative disposition of the application for a hazardous waste facility license;
- (2) The date of a finding of the department that the disposition referred to in subparagraph (1) was not made because of the applicant's failure to furnish information reasonably required or requested to process the application;
- (3) The date of expiration of the license issued under section 414 or 591;
- (4) The date on which the application for a noninterim hazardous waste facility license is due if the person operating under the interim license fails to apply for that noninterim license;
- (5) For interim licenses issued prior to November 8, 1984, unless the owner or operator of the facility has filed a complete application with the commissioner before one of the following dates and that application demonstrates compliance with all applicable ground water and financial responsibility requirements:
  - (a) November 8, 1985, for a land disposal facility;
  - (b) November 8, 1986, for a hazardous waste incinerator; or
  - (c) November 8, 1989, for any facility other than a land disposal facility or hazardous waste incinerator; or
- (6) Twelve months after the facility first becomes subject to the permit requirements of this subchapter unless the owner or operator of the facility has filed a complete application with the commissioner before that date and that application demonstrates compliance with all applicable ground water and financial responsibility requirements. [1991, c. 66, Pt. A, §39 (RPR).]

D. If the commissioner determines based on documentation received from an electronics demanufacturing facility licensed by the department that the facility meets the provisions of this paragraph, the commissioner may allow the facility to undertake the controlled breakage of cathode ray tubes. If the commissioner does not approve or deny the facility's request to undertake controlled breakage of cathode ray tubes within 30 calendar days of receiving the documentation, the facility may undertake controlled breakage of cathode ray tubes in accordance with the provisions of this paragraph.

- (1) The facility shall ensure that no crushing or treatment of universal waste or hazardous subcomponents occurs other than dismantling except that controlled breakage of cathode ray tubes may be performed in a manner protective of public health and safety and the environment. Controlled breakage of cathode ray tubes may occur only in a dedicated space with ventilation equipment that prevents the release of fugitive emissions to adjacent areas. Lead and cadmium concentrations immediately outside the dedicated space may not significantly exceed background levels of lead and cadmium concentrations or current ambient air quality standards for the State. The facility shall determine background levels through monitoring. The facility shall meet the conditions listed in 40 Code of Federal Regulations, Section 261.39 (2010). As used in this subparagraph, "fugitive emissions" has the same meaning as in section 582, subsection 7-C.



(2) The facility shall obtain certification from an environmental and safety program approved by the department and submit proof of certification to the department, except that if a facility has not completed certification, controlled breakage of cathode ray tubes may begin prior to certification if:

- (a) The facility provides information to the department on its process of achieving certification, including a detailed gap analysis; and
- (b) The controlled breakage is monitored by an environmental professional to ensure environmental and safety standards are met.

(3) The facility shall develop a written operating manual specifying how to safely break cathode ray tubes. The operating manual must be available to all employees at the facility and include:

- (a) Operating and maintenance procedures developed in accordance with any related manufacturer's specifications;
- (b) Procedures for testing and monitoring of equipment;
- (c) Procedures to address emergency situations, including, but not limited to, procedures to address lead and cadmium hazards, waste handling and equipment failure;
- (d) Procedures to assess whether surrounding areas will be negatively affected either by physical proximity to or air exchange with a heating, ventilation and air conditioning system;
- (e) Procedures for proper waste management practices; and
- (f) Procedures for employee training to ensure employees have been trained in operation and maintenance of equipment, including, but not limited to, engineering controls to mitigate hazardous waste releases and personal protective equipment use.

The department shall adopt rules to implement this paragraph. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [ 2011, c. 250, §1 (NEW) . ]

[ 2011, c. 250, §1 (AMD) . ]

**2. Municipal ordinances.** Municipalities may enact necessary police power ordinances dealing with commercial hazardous waste facilities, provided that the ordinances are not more stringent than or duplicative of the hazardous waste provisions of this chapter or rules and orders promulgated by the board or commissioner. The department shall incorporate all applicable local requirements to the fullest extent practicable.

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §263 (AMD) . ]

**3. Site review.** All persons who make application for a license to construct, operate or substantially expand a commercial hazardous waste facility shall give, at the same time, written notice to the municipal officers of the municipality in which the proposed facility will be located. The municipality through its municipal officers is granted intervenor status in any proceeding for site review of a commercial hazardous waste facility. The commissioner shall reimburse the municipalities' direct costs, not to exceed \$5,000, for participation in the proceedings.

The Governor may appoint a person to facilitate communications between the applicant and the municipality and between the department and the municipality.

The State may accept public and private funds from any source for the purpose of carrying out responsibilities under this section.

Notwithstanding section 341-D, subsection 2, the board shall decide all applications for commercial hazardous waste facilities.

The board shall hold at least one public hearing in the municipality in which the facility will be located.

During any proceeding for site review of a commercial hazardous waste facility, the legislative body of the municipality in which the facility is to be located may appoint 4 representatives to the board. If the facility is proposed to be located in an unorganized township, the county commissioners of that county may appoint 4 representatives. These representatives may vote on board decisions related to the proposed commercial hazardous waste facility. All representatives appointed under this subsection shall participate on the board only for that site review, until final disposition of the application, including any administrative or judicial appeals. A license application may not be considered by the board unless all municipal members of the board and the municipality have been given written notice of the board meeting and provided copies of all written recommendations of the department, at least 30 days prior to the date of the meeting. The municipal members are entitled to the same pay for each day and expenses as regular board members during the period of their service, to be paid by the department.

[ 1991, c. 205, (AMD) .]

**4. Municipal fees authorized.** A municipality, by ordinance, may levy a fee on a commercial hazardous waste facility located in the municipality. These fees must be applied as a percentage of the annual billings of the facility to its customers. No fee so levied may exceed 2% of the annual billings. The municipality may audit the accounts of a facility to determine the amount of the fee owed to the municipality. Payment of the fee by the facility to the municipality is a condition of any license approved under this section.

[ 1991, c. 205, (AMD) .]

**5. Application.** Except for substantial expansion, this section does not apply to any facility granted an interim or final license prior to September 18, 1981.

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §263 (AMD) .]

**6. Post-closure licenses.** When the board determines that a facility under the jurisdiction of this subchapter does not have and will not be issued a license pursuant to this subchapter, the board may issue a license containing terms and conditions governing the post-closure requirements applicable to the facility, including, but not limited to, environmental monitoring and corrective action. The findings in subsection 1, paragraph A, subparagraphs (1), (2) and (3) are not required for post-closure licenses.

[ 1997, c. 624, §19 (AMD) .]

**7. Criteria for facility development.** In addition to other criteria established by law or rule for facilities under this section, the following criteria for facility development apply to an application for treatment, storage and disposal facilities for hazardous waste.

A. The applicant has the financial capacity and technical ability to develop the project in a manner consistent with state environmental standards. [1993, c. 383, §37 (NEW) .]

B. The applicant has provided adequately for fitting the project harmoniously into the existing natural environment and has ensured that the project will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities. [1993, c. 383, §37 (NEW) .]

C. The proposed project does not pose an unreasonable risk that a discharge to significant ground water aquifer will occur. [1993, c. 383, §37 (NEW) .]

D. The project will be built on soil types suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment. [1993, c. 383, §37 (NEW) .]

E. The applicant will provide adequately for traffic movement of all types into, out of or within the project area. The department shall consider traffic movement both on site and off site including public safety and congestion along waste conveyance transportation routes. The Department of Transportation shall provide the department with an analysis of traffic movement of all types into, out of or within the project area. [1993, c. 383, §37 (NEW).]

F. The applicant has provided adequately for utilities including water supplies, sewerage facilities, solid waste disposal and roadways required for the project and has ensured that the project will not have an unreasonable adverse effect on the existing or proposed utilities and roadways in the municipality or area served by those services. [1993, c. 383, §37 (NEW).]

G. The project will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to a structure. [1993, c. 383, §37 (NEW).]

[ 1993, c. 383, §37 (NEW) .]

**8. Prohibition.** The department may not issue a license for a hazardous waste disposal facility or any commercial hazardous waste facility if the proposed facility overlies a significant ground water aquifer or a primary sand and gravel recharge area.

[ 1993, c. 383, §37 (NEW) .]

#### SECTION HISTORY

1987, c. 517, §28 (NEW). 1989, c. 794, §§5,6 (AMD). 1989, c. 890, §§A40,B263 (AMD). 1991, c. 66, §A39 (AMD). 1991, c. 205, (AMD). 1993, c. 383, §37 (AMD). 1997, c. 624, §19 (AMD). 2011, c. 250, §1 (AMD).

## §1319-S. HAZARDOUS WASTE FACILITY CLOSURE

*(REALLOCATED FROM TITLE 38, SECTION 1308-A)*

**1. Closure plan.** Closure of any new or existing waste facility for hazardous waste and, if required, post-closure care, must be in accordance with a closure plan and, if required, a post-closure plan, approved by the board. An applicant for a license for a waste facility for hazardous waste shall submit a closure plan and, if required, post-closure plan, for approval with any application for a license. For a facility that is licensed at the time of closure under an interim license, the licensee shall submit a closure plan and, if required, post-closure plan, for approval at least 180 days before the date on which the licensee begins closure. The closure plan and, if required, post-closure plan must include measures, such as leachate control, site stabilization and monitoring, to evaluate and maintain the integrity of the facility site in order to prevent harm to the public health, safety and welfare and to the environment.

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §264 (AMD) .]

**2. Closure notice.** Upon approval of a closure plan for a facility for hazardous waste, the commissioner shall file notice with the register of deeds for the county in which the facility is located. This notice must contain the name and address of the current owner of the property, its location, the nature of hazardous wastes handled and the methods of treatment, storage and disposal used at the facility.

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §264 (AMD) .]

**3. Restrictions.** The board may require the present or subsequent owner of the land used for a facility for hazardous waste to execute and record a written instrument which imposes a restrictive covenant on the present and future uses of all or part of the land. The covenant shall be recorded in the registry of deeds of the

county in which the facility is located. The instrument shall be executed by the owners of the property and the commissioner. It may only be required when the board determines that it is necessary to protect the public health and safety. A covenant executed under this section shall run with the land.

[ 1987, c. 517, §21 (RAL) .]

**4. Petition for removal of restrictions.** The owner of the property restricted by covenant under subsection 3 may petition the board to modify or remove these deed restrictions. This petition shall detail the restrictions to which the petitioner objects, the basis of the objections, the nature of the relief requested and the nature of any new or additional evidence to be offered. Upon a showing that the restrictions are not necessary to protect public health and safety, the board may remove all or part of the restrictions.

[ 1987, c. 517, §21 (RAL) .]

**5. Post-closure orders.** Without restricting or limiting any other remedy, the department may issue a post-closure order and enforce its terms when the facility owner or operator has failed to submit a complete application for a post-closure license under section 1319-R, subsection 6, in a timely manner.

[ 1989, c. 794, §7 (NEW) .]

#### SECTION HISTORY

1987, c. 517, §21 (RAL). 1989, c. 794, §7 (AMD). 1989, c. 890, §§A40,B264 (AMD).

## §1319-T. CRIMINAL PROVISIONS

In addition to being subject to civil penalties as provided by section 349, subsection 2 and to criminal penalties as provided in section 349, subsection 3, conduct described in subsections 1 and 2 is subject to criminal penalties as follows. [1991, c. 548, Pt. A, §32 (AMD) .]

**1. Penalty provisions.** Any person is guilty of a Class C crime and may be punished accordingly if that person, with respect to any substance or material that has been identified as hazardous waste by the board and that the person believes may be harmful to human health or knows or has reason to know has been so identified, knowingly:

A. Transports any such substance or material without, in fact, having a proper license or permit as may be required under this subchapter; [1987, c. 517, §28 (NEW) .]

B. Transports any such substance or material to a waste facility knowing or consciously disregarding a risk that such facility does not have a proper license or permit as may be required under this subchapter; [1987, c. 545, (AMD) .]

C. Handles any such substance or material without, in fact, having obtained a proper license or permit to do so as may be required under this subchapter; or [1987, c. 517, §28 (NEW) .]

D. Handles any such substance or material at any location knowing or consciously disregarding a risk that such location does not have a proper license or permit as may be required under this subchapter for such treatment, storage or disposal. [1987, c. 517, §28 (NEW) .]

Notwithstanding Title 17-A, section 1301, subsection 1, paragraph A-1 or Title 17-A, section 1301, subsection 3, paragraph D, the fine for such violation may not exceed \$50,000 for each day of such violation. In a prosecution under paragraph B or D, the conscious disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the person, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

[ 1991, c. 548, Pt. A, §32 (AMD) .]

**2. Class D crimes.** A person is guilty of a Class D crime if, with respect to any substance or material that, in fact, has been identified as hazardous waste by the board and that the person knows or has reason to believe has been so identified or may be harmful to human health, that person knowingly:

A. Establishes, constructs, alters or operates any waste facility for any such substance or material without, in fact, having obtained a proper license or permit as may be required under this subchapter; [1987, c. 517, §28 (NEW).]

B. Handles or transports any substance or material identified as hazardous waste by the board in any manner that violates the terms of any condition, order, rule, license, permit, approval or decision of the board or commissioner with respect to the handling or transporting of that substance or material; or [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §265 (AMD).]

C. Gives custody or possession of any such substance or material to any other person whom that person knows or has reason to believe:

(1) Does not have a license or permit to transport or handle such substance or material as may be required under this subchapter; or

(2) Will transport or handle such substance or material in violation of this subchapter or rules adopted under it. [1991, c. 548, Pt. A, §32 (AMD).]

A person who violates the provisions of this subsection may be punished accordingly, except that, notwithstanding Title 17-A, section 1301, subsection 1, paragraph B, or Title 17-A, section 1301, subsection 3, paragraph E, the fine for such violation may not exceed \$25,000 for each day of the violation.

[ 1991, c. 548, Pt. A, §32 (AMD) .]

#### SECTION HISTORY

1987, c. 517, §28 (NEW). 1987, c. 545, (AMD). 1989, c. 502, §B51 (AMD). 1989, c. 890, §§A40,B265 (AMD). 1991, c. 548, §A32 (AMD).

## §1319-U. FORFEITURE; CIVIL LIABILITY

*(REALLOCATED FROM TITLE 38, SECTION 1306-C)*

**1. Property forfeited.** The following property shall be subject to forfeiture to the State and all property rights therein shall be in the State:

A. All conveyances which are used or intended for use in handling or transporting hazardous waste in violation of this subchapter and all materials, products and equipment used or intended for use in such handling or transportation or handled or transported shall be subject to forfeiture to the State; and [1987, c. 517, §20 (RAL).]

B. All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in any transaction involving a hazardous waste in violation of this subchapter, all proceeds traceable to such a transaction and all moneys, negotiable instruments, securities or other things of value used or intended to be used to facilitate any violation of this subchapter. [1987, c. 517, §20 (RAL).]

[ 1987, c. 517, §20 (RAL) .]

**2. Jurisdiction.** Property subject to forfeiture may be declared forfeited by a court having jurisdiction over the property or having final jurisdiction over a related civil or criminal proceeding under this subchapter.

[ 1987, c. 517, §20 (RAL) .]

**3. Exceptions.** The court may order forfeiture of all property subject to forfeiture, except as follows.

A. No conveyance used by a common carrier in the transaction of business as a common carrier may be forfeited, unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to a violation of this subchapter. [1987, c. 517, §20 (RAL).]

B. No conveyance may be forfeited by reason of an act or omission established by the owner to have been committed or omitted by another person while the conveyance was unlawfully in the possession of another person in violation of the criminal laws of the United States or of any state. [1987, c. 517, §20 (RAL).]

C. No conveyance may be subject to forfeiture unless the owner knew or should have known that that conveyance was used in and for the handling of hazardous waste in violation of this subchapter. Proof that the conveyance was used on 3 or more occasions for the purpose of handling hazardous waste in violation of this subchapter shall be prima facie evidence that the owner knew thereof or should have known thereof. [1987, c. 517, §20 (RAL).]

D. No property subject to forfeiture under subsection 1, paragraph B may be forfeited, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner. [1987, c. 517, §20 (RAL).]

[ 1987, c. 517, §20 (RAL) .]

**4. Procedure.** The Attorney General may seek forfeiture of a conveyance according to the procedure set forth in Title 15, section 5822, with the following exceptions.

A. A final order issued by the court under that procedure must provide for disposition of the conveyance by the Department of Administrative and Financial Services, including official use by a public agency or sale at public auction or by competitive bidding. [1997, c. 364, §41 (AMD).]

B. The proceeds of a sale must be used to pay the costs of cleanup, abatement or mitigation of any threats or hazards to public health or safety or to the environment, the costs of any removal, storage, treatment, disposal or other handling of hazardous waste or hazardous substances, as defined in section 1362, reasonable expenses for the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice, and to pay any bona fide mortgage thereon, and the balance, if any, shall be deposited in the General Fund. [1997, c. 364, §41 (AMD).]

C. Records, required by Title 15, section 5825, must be open to inspection by all federal and state officers charged with enforcement of federal and state laws relating to the handling of hazardous waste. [1997, c. 364, §41 (AMD).]

[ 1997, c. 364, §41 (AMD) .]

**5. Civil liability.** A person who disposes of or treats hazardous waste, when that disposal or treatment, in fact, endangers the health, safety or welfare of another, is liable in a civil suit for all resulting damages. It is not necessary to prove negligence.

For the purposes of this section, damages are limited to damages to real estate or personal property or loss of income directly or indirectly as a result of a disposal or treatment of hazardous wastes. Damages awarded may be mitigated if the disposal or treatment is the result of an act of war or an act of God.

[ 1993, c. 732, Pt. A, §9 (AMD) .]

Nothing in this section shall preclude any action for damages which may be maintained under the common law or the laws of this State. [1987, c. 517, §20 (RAL).]

#### SECTION HISTORY

1987, c. 517, §20 (RAL). 1993, c. 732, §A9 (AMD). 1997, c. 364, §41 (AMD).

## §1319-V. CORRECTIVE ACTION

**1. Requirement.** The facility owner or operator shall undertake corrective action beyond the facility boundary or site to remove the danger to public health or the environment unless the facility owner or operator demonstrates to the satisfaction of the board that the owner or operator is unable to undertake the action and despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake the action. If the board makes these findings, the facility owner or operator is not relieved of responsibility to clean up a release that has migrated off the facility site. The board shall decide how to proceed on a case-by-case basis.

[ 1989, c. 794, §8 (NEW) . ]

**2. Compliance schedules.** If corrective action can not be completed by an applicant prior to issuance of a license pursuant to this subchapter, the license must contain a schedule of compliance for corrective action.

[ 1989, c. 794, §8 (NEW) . ]

### SECTION HISTORY

1989, c. 794, §8 (NEW) .

## §1319-W. RIGHTS OF ACTION AGAINST FINANCIAL GUARANTORS

If the owner or operator of a facility permitted under this subchapter is in liquidation, reorganization or adjustment pursuant to the federal Bankruptcy Reform Act of 1978, Public Law 95-598, as amended, or when, with reasonable diligence, jurisdiction in any state court or any federal court can not be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial capacity must be provided under this subchapter may be asserted by the department directly against the guarantor providing evidence of financial capacity. For the purpose of this section, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial capacity for an owner or operator under this subchapter. [1989, c. 794, §8 (NEW) . ]

**1. Rights of guarantor.** In any action pursuant to this section, the guarantor is entitled to invoke all rights and defenses that would be available to the owner or operator if any action was brought against the owner or operator by the claimant and that would be available to the guarantor if an action was brought against the guarantor by the owner or operator.

[ 1989, c. 794, §8 (NEW) . ]

**2. Liability.** The total liability of any guarantor is limited to the aggregate amount that the guarantor has provided as evidence of financial capacity to the board on behalf of the owner or operator under this subchapter. Nothing in this section may be construed to limit any other liability of a guarantor to its owner or operator as established by state or federal statutory, contractual or common law including, but not limited to, the liability of the guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this section may be construed to diminish the liability of any person under this subchapter or other applicable law.

[ 1989, c. 794, §8 (NEW) . ]

### SECTION HISTORY

1989, c. 794, §8 (NEW) .

## §1319-X. CRITERIA FOR DEVELOPMENT OF WASTE OIL STORAGE FACILITIES AND BIOMEDICAL WASTE FACILITIES

The following criteria for facility development apply to an application for a waste oil storage facility or a new or substantially modified biomedical waste treatment or disposal facility in addition to other criteria established by law or rule for those facilities. [1993, c. 383, §38 (NEW) .]

**1. Financial capacity.** The applicant has the financial capacity and technical ability to develop the project in a manner consistent with state environmental standards.

[ 1993, c. 383, §38 (NEW) .]

**2. No adverse effect on the natural environment.** The applicant has provided adequately for fitting the project harmoniously into the existing natural environment and the project will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.

[ 1993, c. 383, §38 (NEW) .]

**3. Ground water.** The proposed project does not pose an unreasonable risk that a discharge to a significant ground water aquifer will occur.

[ 1993, c. 383, §38 (NEW) .]

**4. Soil types and erosion.** The project will be built on soil types suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment.

[ 1993, c. 383, §38 (NEW) .]

**5. Traffic movement.** The applicant has provided adequately for traffic movement of all types into, out of or within the project area. The department shall consider traffic movement both on site and off site, including safety and congestion along waste conveyance transportation routes. The Department of Transportation shall provide the department with an analysis of traffic movement of all types into, out of or within the project area.

[ 1993, c. 383, §38 (NEW) .]

**6. Infrastructure.** The applicant has provided adequately for utilities including water supplies, sewerage facilities, solid waste disposal and roadways required for the project and the project will not have an unreasonable adverse effect on the existing or proposed utilities and roadways in the municipality or area served by those services.

[ 1993, c. 383, §38 (NEW) .]

**7. Flooding.** The project will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to a structure.

[ 1993, c. 383, §38 (NEW) .]

The department may not issue a license for a waste oil storage facility if the proposed facility overlies a significant ground water aquifer or a primary sand and gravel recharge area. [1993, c. 383, §38 (NEW) .]

### SECTION HISTORY

1993, c. 383, §38 (NEW) .



## §1319-Y. REQUIREMENTS FOR USED OIL COLLECTION CENTERS

Owners and operators of used oil collection centers who wish to register their used oil collection centers for the purposes of section 1319-G, subsection 3 must comply with the following requirements in addition to any other requirements that may be established in rules adopted pursuant to section 1319-O, subsection 2, paragraph B. Other used oil collection centers are not required to comply with the provisions of this section. [1995, c. 573, §6 (NEW).]

### 1. Registration. Registration of used oil collection centers is governed by this subsection.

A. The owner or operator of a used oil collection center shall register the center on a form provided by the department. The registration form must be sent by certified mail or hand-delivered to the department. The registration form must be accompanied by photographs of the used oil collection center that clearly show that the design requirements of subsection 2 have been met. [1995, c. 573, §6 (NEW).]

B. If the applicable requirements of this section have not been met, the department shall notify the owner or operator in writing no later than 30 days after the department receives the completed registration form and photographs. If the department has not notified the applicant within the 30-day period, the center is deemed to be registered. [1995, c. 573, §6 (NEW).]

C. The owner or operator of a used oil collection center shall file an amended registration form within 10 business days upon any change in the information provided on the initial registration form. [1995, c. 573, §6 (NEW).]

[ 1995, c. 573, §6 (NEW) . ]

**2. Design requirements.** In order to qualify for the waiver of reimbursement under section 1319-G, subsection 3, the following design requirements applicable to aboveground tanks used to collect or store used oil must be met.

A. Tanks that are located outdoors must be watertight, must be equipped with spill and overfill protection, must be secured to prevent the tank from tipping over and must either:

- (1) Be double-walled; or
- (2) Have an alternate means of impervious secondary containment that is watertight and has the capacity to hold a minimum of 110% of the contents of the tank, with a roof over both the tank and the secondary containment. [1995, c. 573, §6 (NEW).]

B. Tanks that are located inside a building must have rigid piping, must have a funnel that is rigidly attached, must be secured to prevent the tank from tipping over and must either:

- (1) Be double-walled; or
- (2) Have an alternate means of impervious secondary containment that has the capacity to hold a minimum of 50% of the contents of the tank. [1995, c. 573, §6 (NEW).]

C. Tanks must be constructed of fiberglass, steel or other nonporous material. [1995, c. 573, §6 (NEW).]

D. The total aggregate capacity of all used oil tanks at a used oil collection center may not exceed the greater of 660 gallons or the total aggregate capacity of the used oil tanks at that center on the effective date of this section. [1995, c. 573, §6 (NEW).]

E. Tanks must be located in a manner that permits them to be readily inspected for evidence of leaks. [1995, c. 573, §6 (NEW).]

F. Tanks may not be located where any leaks could drain into sewers, floor drains or storm water catch basins or in areas subject to floods. [1995, c. 573, §6 (NEW).]

G. Tanks must be maintained in good condition with no severe rusting, no apparent structural defects or deterioration and no visible leaks. [1995, c. 573, §6 (NEW).]

H. Tanks must be clearly labeled or marked with the words "Used Oil." [1995, c. 573, §6 (NEW).]

I. Tanks must be located so that they are not exposed to a spill or leak of a Class I or Class II liquid. [1995, c. 573, §6 (NEW).]

J. The installation of tanks must be in accordance with applicable local ordinances. [1995, c. 573, §6 (NEW).]

K. Tanks must be protected from vehicular traffic by location or protection with bollards or similar devices. [1995, c. 573, §6 (NEW).]

[ 1995, c. 573, §6 (NEW) .]

**3. Operational requirements.** In order to qualify for the waiver of reimbursement under section 1319-G, subsection 3, the owners and operators of used oil collection centers:

A. May accept no more than 20 gallons of used oil from any entity or individual in a 24-hour period; [1995, c. 573, §6 (NEW).]

B. Shall inspect each load of used oil by sight or scent before accepting the used oil for collection; [1995, c. 573, §6 (NEW).]

C. Shall keep the used oil collection tank locked at all times, except when used oil is being added or removed; [1995, c. 573, §6 (NEW).]

D. Shall supervise the addition of used oil to the tank; [1995, c. 573, §6 (NEW).]

E. Shall provide ongoing maintenance and repairs at the used oil collection center to avoid any environmental hazards such as spills, leaks, discharges, fires and explosions; [1995, c. 573, §6 (NEW).]

F. May offer used oil only to persons licensed with the department as waste oil transporters pursuant to section 1319-O, subsection 2, paragraph A; [1995, c. 573, §6 (NEW).]

G. Shall report to the Department of Public Safety within 2 hours of becoming aware of a discharge and immediately take action to contain and remove any discharges of used oil; and [1995, c. 573, §6 (NEW).]

H. Shall notify the department no later than 24 hours after discovery that used oil delivered to or collected at the center is a hazardous waste. [1995, c. 573, §6 (NEW).]

[ 1995, c. 573, §6 (NEW) .]

#### SECTION HISTORY

1995, c. 573, §6 (NEW).

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